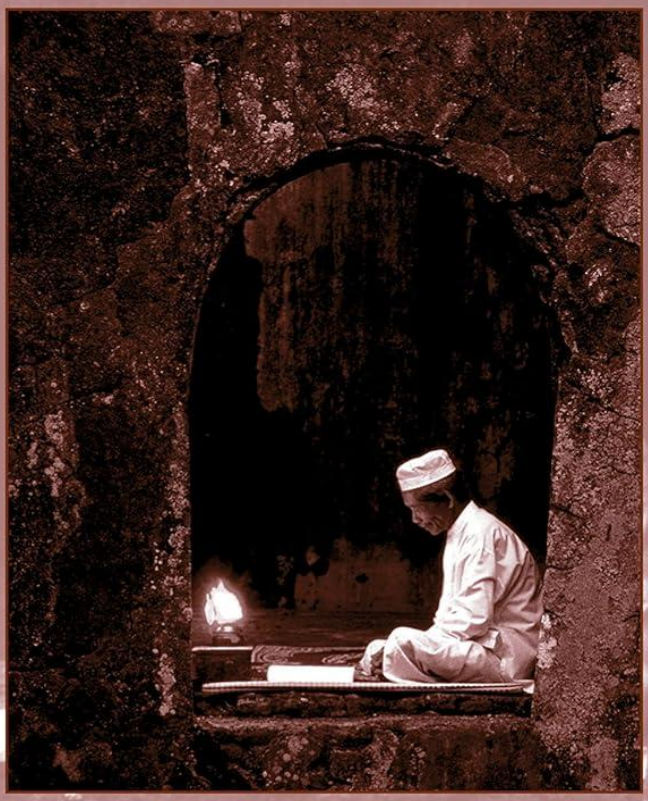
INDONESIAN ISLAM

SOCIAL CHANGE THROUGH CONTEMPORARY FATĀWĀ

M.B. HOOKER



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INDONESIAN ISLAM

Social change through contemporary *fatāwā*

M.B. Hooker

Asian Studies Association of Australia
in association with

ALLEN & UNWIN
and
UNIVERSITY OF HAWAI'I PRESS
HONOLULU

First published in 2003

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Published in Australia by
Allen & Unwin
83 Alexander Street
Crows Nest NSW 2065
Australia

Published in North America by
University of Hawai'i Press
2840 Kolowalu Street
Honolulu, Hawai'i 96822

National Library of Australia Cataloguing-in-Publication entry:

Hooker, M.B.
Indonesian Islam : social change through contemporary fatawa.

Bibliography.
Includes index.
ISBN 1 74114 086 2.

1. Islam – Indonesia. 2. Fatwas – Social aspects – Indonesia. I. Title.

297.2709598

Library of Congress Cataloging-in-Publication Data:

A catalog record of this book is available from the Library of Congress
ISBN 0 8248 2758 9

Set in 10/11 pt Times by Midland Typesetters, Maryborough, Victoria
Printed by SRM Production Services Sdn Bhd, Malaysia

10 9 8 7 6 5 4 3 2 1

To my wife, Virginia,

Whose fatāwā *are consistent over time,*
are always perfectly argued,
and invaribly right.

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Preface

A *fatwā* is a formal advice from an authority on a point of Islamic law or dogma. It is given in response to a question. Many, the majority, merely restate known positions and so act as a sort of formal reassurance; this in itself is an important function. However, there are *fatāwā* from all periods of Muslim history which engage directly with the demands of new circumstances, and hence with social and legal change (see Introduction).

The Indonesian *fatāwā* described in this book are of the latter kind. The *fatāwā* are from the 1920s to the 1990s, from the period of high colonialism to independence, thus encompassing the vast political, social and legal changes of this period.

The challenge for the *fatwā*-giver is to maintain the centrality of divine Revelation but at the same time to determine individual duty in a practical way. As we shall see, the arguments are as much in moral and political philosophy as they are in the philosophy of law. This function of the *fatāwā* has always been crucial for Islam; but now, in the 15th/21st century, it has assumed an importance seldom encountered in earlier history. The past 200 years have seen the subjection of Muslim peoples to Western imperialism. This has included the reformulation of syariah law into Western forms (codes, statutes, precedent), thus effectively ending the link with the classical past. The syariah, the fundamental expression of Revelation, was and remains colonised by European thought. Only the *fatāwā* preserve the link between the challenges of modernity and the classical inheritance because in their arguments they take us to the Qur'ān, Sunna and the classical texts without an intervening European intellectual influence.

In Indonesia, the *fatāwā* show a variety of response to the challenges of modernity. The four main sources are: Persatuan Islam, Muhammadiyah, Nahdatul Ulama and Majlis Ulama Indonesia. There are considerable differences between them but at the same time some rather surprising correspondences. Variation is the norm and is particularly evident in

gender (chapter 3) and science (chapter 4), but it extends also to basic religious duties (chapter 2) as well as to methodology (chapter 1). It is important to stress that there is variation in principle and practice because multiplicity of principle and practice is the lifeblood of law and dogma. To deny this is to sink into an ahistorical rigidity and an ultimate sterility. This has been the fate of the so-called 'Islamic' law codes found in contemporary nation-states. The *fatwā* form, including the Indonesian, show us a truly remarkable creative engagement between the texts and contemporary social reality. The *fatāwā*-givers provide us with authoritative statements which link classical doctrine to the day-to-day life of the individual Muslim.

That day-to-day life was and is not easy for the individual who took and takes Revelation seriously. The difficulties are further compounded by state repression (Netherlands East Indies) or the reluctant accommodation of Islam (Republik Indonesia). The *fatāwā* are crucial because they are internal responses to issues which the members of the *umma* themselves see as vital for truly performing the duties that all Muslims owe to God. Now, in the 15th/21st century, the state claims authority to define an 'Islam'. The *fatāwā*, however, re-affirm that authority is in God and that 1400 years of intellectual tradition is primary; the state is real, it is a real context, but it is also secondary.

These two authorities can be in opposition; more usually they shade or merge into each other. It is the thesis of this book that only the *fatāwā* can tell us what Islam is on this continuum at a place and time—Indonesia at the beginning of the 15th/21st century. That Islam, while unchanging in theory, is variable in practice, as the ongoing *fatāwā* genre demonstrates. Change is the constant factor and this book is therefore limited to its own circumstances and times. What the future holds is in the hands of God to be interpreted in the *fatāwā* to come.

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Acknowledgements

The research on which this book is based was funded by an Australian Research Council Large Grant.

I am particularly indebted to the Dean of the Faculty of Asian Studies at the Australian National University, Professor A.C. Milner, and his staff; especially to Dr Nijmeh Hajjar, Dr Greg Young and Ms Vanessa Kendrick. Ms Andrea Haese was a tower of strength in a time of need.

I am also very grateful to my three research assistants, Mr Bernard Quinn, Ms Helen Donovan and, especially, Ms Brenda Fane.

For help in Indonesia, I acknowledge with gratitude the support of Professor Azyumardi Azra, Rector of the State Islamic University (formerly IAIN Syarif Hidayatullah), and his colleagues. I hope this book goes some way towards repaying my debt to Muslim colleagues in Indonesia.

My wife, as always, has been both critical and totally supportive, a difficult double act to bring off successfully.

Introduction
Twentieth-century Islamic reform: contexts for the Indonesian *fatāwā*

A *fatwā* is a formal answer to (a) an interrogatory or (b) an issue of principle on dogma and law given by a person with authority to do so. This is a simple proposition but, as with all 'simple' definitions in law, its simplicity is deceptive. How is authority to be defined, is it always the same, who provides the definition, and how is it exercised? The crucial point to remember about *fatwā* is that it is essentially reactive to these issues in reflecting the intellectualism and politics of the time(s). The purpose of this introduction is to provide the material necessary to understand the Indonesian *fatāwā* at the end of the 20th century. The historical context is essential: after all, we are dealing with the place of a 7th century theology 1400 years later.

The original form of the *fatwā*[1] was established by the 3rd/10th century. For a particular *fatwā* to be accepted it had to have the appropriate authority (*al-ijāza li'l-iftā'*). Authority (*ijāza*) rested on one's general acceptance by a known circle (*ḥalqa*) of eminent jurists. It was thus personal: 'the sovereign power had no part in the process'.[2] The individual *Muftī* was part of a scholarly genealogy (*silsilah*) stretching back, in some cases, to the Prophet and Companions. This principle of independence has always had important implications for the state (however defined) which it retains today.

The qualities required of a *Muftī* (giver of *fatāwā*) in the classical jurisprudence are set out by al-Baghdādī (decd ca. 429/1037) in his *Faqīh*[3] as one who is adult, of good character, trustworthy. He could be freeman or slave. He had to know Qur'ān, Sunna, consensus of earlier jurists and their differences, and the science of *qiyās* (reasoning by analogy). In addition, al-Baghdādī stressed that the *Muftī* had himself to continue to study and to retain a good memory. Those requirements were similar to those demanded by Shāfi'ī. It was not necessary to be word-perfect in the four sources but the *Muftī* must be capable of original legal scholarship. This meant the ability to practise his own *ijtihād* (scholarly reasoning), to be truly a

mujtahid. But just what was a *mujtahid* in Sunni legal theory? The answer was a person qualified to form his own opinion—which, by its nature, demonstrated a mastery of all branches of 'rational and textual knowledge'. The mere following (*taqlīd*) of the doctrine of another denotes only a *muqallid*, not one qualified in *ijtihād* or *qiyās*. But where is the line to be drawn, who is to draw it, and what is the significance of the centuries-old debates[4] for us at the beginning of the 21st century? In answering these questions we must bear in mind that the *fatāwā* of previous generations are, *in theory*, not binding on the contemporary generation. As against this, however, the standard collections[5] of each *madhhab* (school) did and still do carry great weight, even approaching precedent in some places and times.

The classical formulation assumed both stasis, and the primacy of Islam in law and society within the *umma*. However, by the early 19th century all of the 'East' was ruled by, dominated by, or subjected to European powers—the British, French, Dutch and Czarist. The Western assault was military, economic, but most of all it was an intellectual one. Revelation was no longer the sole source for authority. Suddenly the nature of authority was different: it was in science and rationalism, secularism (later also socialism), the nation and national ideologies. Moreover, these new authorities were demonstrably successful: their representatives actually ruled over several millions of Muslims. Islam was no practical defence and, it seemed, had no intellectual answer. The *umma* was 'British' this, or 'French' that, or 'Dutch' something else. Whether the *umma* lived in a colony, a protected state, a place of settlement or a trucial state made absolutely no difference. Islam was no longer the foundation of authority, and even in the 19th century Ottoman Empire, the last Muslim sovereignty, the West was determining the future. Of course there was an intellectual and political response and resistance. It was in what we now call political philosophy but conducted within the canons of Muslim legal thought—hence a 'new' scholasticism. Could this be an intellectual authority within the canons of Islam for Southeast Asian Muslims? The latter followed developments in the late 19th-century Middle East—especially in Egypt and Turkey—with a passionate interest. The Muslim intelligentsia in the British and Dutch territories engaged in intense debate and publication in which the Egyptian (Arabic) material was crucial. It had a direct and ascertainable effect on Muslim intellectuals in the Netherlands East Indies (below).

THE 'NEW' SCHOLASTICISM—THE ARABIC WORLD

By 'new' I mean the 19th century, especially the later 19th century, continuing into the 20th century. It is with the latter[6] that we are concerned here, and we begin, as all accounts do, with the great Egyptian reformer, Muhammed ʿAbduh (1849–1905, *Muftī* 1899–1905), the perfect 'transition man'. Studies of his life and work are legion, and I confine discussion here to the impact of his thoughts in the creation of an Islamic 'natural law'. ʿAbduh asserted that

man's ability to recognise right behaviour comes through the exercise of (God-given) reason. For us now, at the beginning of the 21st century, this is an immediately recognisable proposition. However, it reduces Revelation to a function so that it is a guarantor of reason but no longer primary as such. Revelation has a further function, to threaten sanctions (fear of punishment in the hereafter), which again is referenced to the following of, or dictates to, reason. This is an elitist position and does not in any way refer to the masses, members of which are by definition incapable of sustained rationality. For both classes, however, Revelation does provide certainty.[7]

When we come to society, or the structure(s) of society, ʿAbduh was unashamedly a 'humanist', as Dr Cantwell Smith says (below), although there is enough Islamic reference to disguise, in part at least, that it was the human (individual and collective) intelligence which determined the viability (or not) of any society. He drew lessons and parallels from the histories and experiences of other, non-Muslim, states so as to demonstrate the inexorability of the historical process. The quality of government depends, he argued, on the maturity of those in charge of the state; and for those persons Islam is not a necessary qualifier. The *form* of the state (*not* the *umma*) may be anything from a (benevolent) dictatorship to some sort of representative (via *shūrā*) system. Muslims can only defend themselves and Muslim societies can only be secure and advance through a unity (*ʿaṣabiyya*) consciously developed and implemented by themselves. Islam here may be a point of reference but it is not a necessary condition for rationalism or progress or scientific attainment.[8] In short, Revelation alone cannot be a defence against the new secularism. For ʿAbduh, such could possibly be found in *ijmāʿ* but this was not the *ijmāʿ* of the orthodox jurist. Instead, it was the 'expression of a collective rational judgement . . .',[9] in other words, contemporary reason. But ʿAbduh was skilful enough in his formulations, as Sheikh Al-Azhar (1899–1905), to speak and write in a terminology that was sufficiently classical for even the most orthodox '*ulāmā*'.

Much of the credit for his reputation must go to his disciple, Rashīd Riḍā, who was responsible for the collected works later published. Riḍā himself is remembered in the Southeast Asian Muslim world as the editor of *Al-Manar* (below), but we tend to forget or underplay his contribution to jurisprudence. This is to be found in his creative use of *maṣlaḥa*—now usually translated as 'interest' or 'benefit' for the *umma*. It is not self-interest, but a *good for society*. By what criterion is such to be established? There is no answer as such; however, one may look for an answer by (a) distinguishing *ʿibādāt* (prescribed ritual) and *muʿāmalāt* (social practices) and (b) looking to the form and substance of the latter for each place and age. The problem of course is to distinguish between the two and thus agree a suitable definition. Rashīd Riḍā finds a solution in the Hanafī principle of *istiḥsān*—the ruling in which benefit to the community is confirmed, and this of course comes back to *maṣlaḥa*. However, the principle must be treated with caution. It was and is always open to the corrupt or

unjust ruler to use the principle for his own purposes. The only defence against this was to define *maṣāliḥ mursala* as *ʿilla* (sufficient link) requiring a specific argument from a demonstrable causal principle.

The proper use of *maṣlaḥa* requires political reform whereby those in authority are obliged to act from proper motives. How this is to be done is still in dispute. Rashīd Riḍā never got from *maṣlaḥa*, as *ʿilla*, to a fully worked out scheme of positive law suitable to the new age. It was probably too late in any case, given the increasing European-derived positive law systems by then (1900s) well established in all the Muslim world. However, the concept of public interest has in the past few years become increasingly important in *fatāwā* from all parts of the Muslim world. It is here, then, that Rashīd Riḍā's discussion takes on a new urgency. As we shall see, the principle can be not only used to justify an abandonment of known rules but actually to create new ones for the circumstances. But where does this leave Revelation? The answer appears to be that Qur'ān and Sunna are givens, but that we know them in their manifestations in *ijmāʿ*. There is a certain amount of inconsistency here because essentially the 'positive legislation' coming out of the latter is to validate by association. It is the human value judgement that is primary.

All of this is rather hard to call 'natural law'. The usually accepted definitions, where revealed religions are at issue, are that positive law (i.e. man-made) is valid only to the extent posited by Revelation and within the practices set by Revelation. A 'law' is such only within and for the purposes of Revelation. This is as true for the *Syariah* as for mediaeval Catholicism or contemporary Jewish law in Israel. Sovereignty is exercised by God; man, to the extent that he possesses a delegated authority, has it only within the Revealed purpose. To suppose that the new *ijmāʿ* of Rashīd Riḍā or the historical forces posited by Muhammed ʿAbduh fit into these restrictions is to seriously misunderstand their positions, and misunderstanding certainly abounds, much of it based on rather sweeping generalisations about the politics surrounding the definition of 'Islam'.[10]

More recently the works of Sayyid Qutb and Hasan Hanafī[11] both provide sustained criticism of secularism and emphasise the role of Revelation in politics. The former in particular, with his emphasis on the external nature of Islamic scripturalism combined with his insistence on the realistic and practical nature of religion, is sometimes seen as reifying Islam. However, he is willing to admit that the *forms* of Islam may differ but that principles must be immutable. The unity, or at least a minimal consistency of Revealed principle and actual Muslim practice, will answer the needs of humanity in the 21st century. These are views which assume the nation-state, but the implications for Islam of that assumption did not really come to be realised until the 1920s–30s.

The *Majallat Al-Azhar*,[12] established in June 1930, was the first pan-Islam publication with real authority that attempted to deal with this new phenomenon.[13] As a publication it was directed mainly to the learned in

Islam but it also had some pretension to influencing the wider educated Muslim audience. A useful early summary in English for the years 1933–47 is that written by Dr W. Cantwell Smith.[14] This concentrates on the first two founding editors of the *Majallat*, who are used as exemplars of '*ulāmā*' response to the intellectual demands of the immediate pre- and postwar period. This is actually quite an interesting approach, because it tells us as much about the psychology of the author as about the two editors.

The first is al-Khiḍr Husayn (1930–32), who is described as '. . . an idealist . . . the nobility of [whose] position is clear . . .'. The reference to 'idealist' appears to be a reference to two things. First, to a position in metaphysics. Second, to a position in ethics/morality where the '*ulāmā*' responsibility is confined to instructions and example. The moral imperative, once known, will inevitably determine the nature of men and society. Revelation is thus primary. Thus '. . . man must strive to make real society approximate more closely to the ideal [of Islam]'.[15] The only real function of any history of Islam is to provide moral examples. This reading of al-Khiḍr Husayn has an attractive simplicity for us 40 years later, but it can hardly be totally accurate.

The same is true of Professor Smith's account of the *Majallat*'s second editor, Moh. Farīd Wajdī (1932/3–1952), whom he dismisses at the outset as 'vacuous'. In its own way this is just as misleading as uncritical admiration. It appears to rest on the fact that Wajdī was not an 'idealist' but a man of compromise, for whom Islam was only 'a heritage, a society, an historical reality' which had to be defended. It is difficult for us today to understand why Dr Smith was so wholly condemnatory. After all, the excellence and superiority of Islam always remains the given proposition. On the other hand perhaps, it is not always clear in Wajdī whether the excellence is in Revelation or history or culture. Materialism (or, better now, secularism) was rightly seen by him to be the great enemy of Islam as of all religions. Perhaps Wajdī went too far in his direct engagement with Western thought *on the terms of that thought*, even though his motives for doing so were of the highest (see below for later examples). There is no justification for a Western author to be patronising about this, given the circumstances of the time. But the habit is hard to break and it is not helped by ill-informed comment from contemporary Muslim authors. For example, 'science' was and is often invoked to demonstrate the truth of Revelation (chapter 4). This is not only an acceptance of Western criteria: it amounts also to diminishing Revelation itself. For many Western observers such a response gives the impression that Islamic thought is confused, not to say incoherent.

This is certainly the view of Dr Lazarus-Yafeh, whose analysis[16] of material from the *Majallat Al-Azhar* spans the years 1963–68.These were years of fundamental change for Al-Azhar: in 1961, the law of that year subjected the university to state control (below) and it became, in effect, a state university with faculties of secular studies. The new law also

rationalised the existing faculties of law, theology and Arabic so as to better fit them for the modern world.

Dr Lazarus-Yafeh divides her material into three parts. First, problems in traditional law and religion in contemporary life—that is, birth control, modern forms of property, and methods for payment of *zakāt*. Second, the same sorts of issues relating directly to religion, for example translations of the Qur'ān. Third, what the author calls the 'large general problems of modern times', by which she means such subjects as secularisation, Islam and the state, and *ijtihād*. This arrangement is overelaborate; the real distinction is between issues known in classical *fatāwā* and those not known. It is the latter which pose the real challenge, and examples include birth control and organ transplants, which raise issues in ethics.[17] It is here that the principle of *maṣlaḥa* (public benefit) begins to attain an important position in contemporary Muslim thought (see below). Other issues dealt with include the propriety of watching TV programs on the life of the Prophet, attendance by Muslims at Christian ritual (e.g. a funeral),[18] and whether Muslims may vote for non-Muslim political candidates. Other subjects include the classification of company shares or analogy with the *fiqh* rules as to movable property, the propriety of translation of the Qur'ān, and the use of science to calculate the dates of important ritual observance (especially the end of Ramaḍān). The most contentious issue was (and remains) the position of women in Muslim society. The data from this period seem to suggest that the 'Islamic' position was very much a response to pressure exerted by the state. The stronger the pressure, the more 'liberal'—that is, accommodating—became the *fatāwā*. However, there were always 'provisos'.

We can look at 'provisos', by which I mean qualified statements, in the career of Maḥmād Shaltūt (1893–1963), Sheikh Al-Azhar 1958–63. From our distance in time, now half a century, he can be seen as a crucial, indeed pivotal figure[19] for the '*ulāmā*' response to the West. He was born in an age of high colonialism, lived through 1948 and the Suez crisis of 1956, and died in 1963. The Third World was invented in his lifetime, which must have seemed to him much of a rerun of the 1900s. After all, he was familiar with the works of ʿAbduh and Al-Marāghī, among others. In 1941 Shaltūt had put forward an elaborate program of reform for Al-Azhar. An important feature of this was to improve the *Majallat* so as to best serve Islam in the modern world. By 'improve' he meant to serve the interests of the 'Islamic intellectual movement'. This came to little at the time, as did his constant efforts to eliminate or minimise the differences between the various *madhhab.* He even went so far as to say that ritual according to the Shīʿā form was as legitimate as any Sunni practice; this was (and is) consistently rejected by later scholars.

Shaltūt was Sheikh Al-Azhar at the time of the 1961 law. He was, therefore, responsible for cooperation with government in the reforms imposed on the university. Here, his position was impossible because the law gave ultimate authority to the secular government—in this case, the Minister of

Waqfs and Director of Al-Azhar Affairs.[20] It meant that the Sheikh Al-Azhar was a subordinate. This was a result of the politics of the time, and Shaltūt's writings have to be judged with this in mind.

In *fiqh*, he identifies three sources—Qur'ān, Sunna, and *raʾy*. The Qur'ān is not, by its nature, a legal manual, and its legal prescriptions are general; its significance consists in its authenticity. The *Sunna*, on the other hand, is a guide for practice, but within it one must distinguish between the different types of actions of the Prophet to be able to gauge their prescriptive status. The third source, *raʾy*, is method—that is, reasoning—and here he is clear that *ijmāʿ* (consensus of jurists), while theoretically realisable, is in fact a chimera. The answer to the dilemma is, in his view, not to close the gates to *ijtihād*, which is a response based on form, but to invoke *maṣlaḥa*. In this way *ijmāʿ* is variable. This, in my view, is an extremely important proposition and follows in line from Muhammed ʿAbduh and Rashīd Riḍā. Essentially, what brings the three men together on this point is the recognition that change is a constant and that this has to be recognised and coped with in a systematic and organised way.

Perhaps the most important element of Shaltūt's thought is the impulse towards *ikhtilāf* (the study of divergence and convergence of rules between Sunni *madhhab*). While he does not ignore the technical (and especially linguistic) difficulties, he is quite clear that an unthinking adherence to any one *madhhab* is a mistake, both from the internal Muslim point of view and from the standpoint of a common Islamic position in the face of secularism (God is not 'necessary') as embodied in the nation-state. But this last is a dangerous line of argument: by accepting that there is a secular position, one is thus open to secular *evidence*. Shaltūt was himself well aware of this, and we can see this illustrated in his *fatāwā*. [21] These have been an immensely popular collection, with 20 editions to 1997. They have been collected from newspapers and radio and are thus clear, plain and to the point for the ordinary Muslim. It is certainly not too much to say that they were revolutionary in their day. The idea that scholarship and plainness of language could be usefully combined for the benefit of the common man was of immense importance. Further, he addressed the problems of modernity. It is not easy to answer complex questions arising out of the secular condition in a way that makes sense to the recipient and yet remains valid in dogma and *fiqh*. The new media make it no easier.[22]

One can analyse Shaltūt's *fatāwā* in a number of ways, but for the purposes of this book there are two characteristics that should be emphasised. The first is his extensive use of *maṣlaḥa* (public/general benefit). This is not a new concept: al-Ghazālī, Ibn-Taymiyya and Najmal al-Dīn al Tūfī all considered it important. However, the contemporary use of the principle, especially in Southeast Asia, is of such a character that it seems almost to constitute an independent *source* of law.[23] This has yet to be demonstrated (see Epilogue), but whatever the answer might turn out to be it is clear that Shaltūt's use of the concept has been enormously influential.

In part, this is due to his position as Sheikh Al-Azhar. More important for the longer-term jurisprudence of Islam is the creative use he makes of 'preservation of interest' (*ḥifz al-maṣālih*) and 'aversion of harm' (*al-ḍarar madfū ʿbi-qadr al-imkān*).

The second characteristic is one to which I have already adverted: the willingness to accept and consider evidence from outside the classical sources. This has always been a sensitive issue and the reason–Revelation equation, or the balance between them, is the greatest challenge facing contemporary Islam. An overemphasis on either side is undesirable or impossible for the obvious reasons—being quite out of touch with reality on the one hand or denying the primacy of Revelation on the other. Both alternatives go far beyond the somewhat naive wish to show that Islam is consonant with or 'supported by' science.

The public face of dogma is found in the personalities of those who give *iftā*. In these individuals we have the current representation of religion. One cannot overstress this point; it is the '*ulāmā*' who define, and there is, of course, a hierarchy of '*ulāmā*' authority. The Sheikh Al-Azhar is at the apex for Sunnī Islam and the present holder of the position, formerly *Muftī* of Egypt, is Muhammed Sayyid Atīya Ṭanṭāwī. In his own person he sums up the strengths and weakness of the '*ulāmā'* lineage at the new millennium. His life and work has been described fully by Dr Skovgaard-Petersen,[24] upon whom I rely here, and all I wish to do here is indicate some particular points of interest for Indonesian Islam.

First, Ṭanṭāwī's intellectual lineage is not in the courts; he has not even a formal training in *Syariah*. He is a theologian who aims at communication with the Muslim masses and is an avowed follower of Muhammed ʿAbduh. His relationship with the centres of power in government is thus primary. He has been criticised because of this and for the attention he gives to the political ephemera of the day. Second, because his intellectual lineage is in theology and history rather than in *fiqh,* his *fatāwā* in the style of the 'new' scholasticism tend to treat the more technical limits imposed by *qiyās* in a slightly cavalier fashion. His use of *maṣlaḥa* in a series of *fatāwā*[25] on the new subjects (sex change, insurance, and savings certificates among others) shows that his primary concern is with the adaptations of Islam to contemporary issues. He is not prepared to allow the minutiae of classical *fiqh* much credence. His rulings in the very controversial areas of medical ethics and the status of women in Islam illustrate this. At the same time, Ṭanṭāwī is by no means a creature of government: he has published *fatāwā* objecting to government policy. A third and final point is that, unlike a scholar trained in the classical *fiqh*, Ṭanṭāwī is quite prepared to be eclectic in his sources of authority—in this case sources drawn from (non-Revealed) science. The sighting of the New Moon is the circumstance which brings the reference to source(s) outside classical *fiqh*.

This matter of eclecticism of source is not a new occurrence. In its modern form we can trace it to Rashīd Rāḍa, and we can see it exemplified

in more recent Islamic philosophy. An outline of this under the heading 'religious utilitarianism' has been recently published by Professor Wael Hallaq,[26] who describes the works of ʿAbd al-Wahhāb Khallāf (decd 1956), ʿAllāl al-Fāsī (decd 1973) and Ḥasan Turābī. While there are important differences among them, all rely on a very 'expansive'[27] *maṣlaḥa*, but how this, in whatever degree of generality, relates to Revelation they do not explain. Using the Revealed texts as a source to be mined is not a methodology. It may serve some short-term end, as in the 'Islamic' elements one finds in contemporary Muslim 'codes', but essentially it is a trivialisation of *fiqh*.

A more satisfactory approach is that which looks to an interpretation of the language of the texts. This Professor Hallaq terms 'religious liberalism', and it consists of denying that 'traditional religious interpretation' is either faithful to the religion or of any use in the contemporary Muslim world.[28] The fact that the proposition is in the negative does not lessen its utility, because it forces quite fundamental responses from Islamic scholarship. The examples Professor Hallaq gives include the works of Saʿīd ʿAshmāwī, Fazlur Rahman (decd 1958) and Muhammad Shaḥrūr. Each author, in his own way, attempts to find '. . . a general principle which embodies the rationale behind a certain ruling [of *fiqh*]'[29] and then to use it as an answer to contemporary problems. This is actually rather hard to do, and the debate continues. It does, however, have a positive potential, while an eclecticism of source, on the other hand, is always self-defeating.

It is time now to take the Indonesian response to the same issues.

ISLAM IN INDONESIA, 19TH TO 20TH CENTURIES

It is a common misapprehension to suppose that Islamic reform in Indonesia is little more than a rerun of Egyptian intellectualism. Unfortunately this view is even held to some degree in Indonesia itself. While not denying the importance of the Middle Eastern reforms, this misapprehension should be laid to rest because the facts of Indonesian Islamic life are not those of the Arabic Middle East. Indonesian Islam has its own peculiar complexities which comprise the essential background to the 20th-century *fatāwā*. Three factors must be taken into consideration.

Indigenous Islam

The doctrines of the Shāfiʿī madhh*ab*, to which Indonesian Muslims belong, were known in Arabic through the 16th-century commentaries on *fiqh*, most notably those by ar-Ramlī (*Nihāyat*) and ibn-Ḥajar (*Tuḥfah*). These materials and others[30] were also translated in whole or in part. Further, and again with reference to the texts, the 17th-century Malays and Javanese invented hybrid texts in which elements of the *fiqh* were incorporated in local rules. These, the *undang-undang* texts,[31] are complex and

express an Indonesian definition of such abstracts as 'duty', 'rule', 'sovereignty' and 'authority'. They are not adaptations or copies of the Arabic—they are original works expressing a local understanding of Islam. These texts, dating from the mid- to late 17th century, were part of a new Muslim state order[32] and came out at the same time as complex theological and philosophical works (below). The lesson for us is that even in the most technical aspects of prescription the Indonesian material does not show a simple copying of the original Arabic sources. The balance between the original and the new Indonesian expression varied from time to time and from place to place. How this would eventually have developed we shall never know. The arrival of the Dutch effectively halted development from the late 18th century onwards.

Continuing with the Arabic text inheritance, we can see the same process at work in respect of philosophy and theology. The 16th to 18th centuries saw the composition of a *tassawuf* literature in Indonesia which can appropriately 'be regarded as constituting a classical Malay philosophy'.[33] The reference here is to the work of authors such as Hamzah Fansuri, Shams ul-Din, ar-Raniri, Abdul Rauf and al-Palembani. There is a considerable scholarly literature on this and the equivalent Javanese material.[34] It is often supposed that the debates in the Indonesian texts are little more than commentary of greater or lesser sophistication on the teachings of al-Ghazālī. It is true that he is the source or fountain for the Indonesian discussions, but this is not an admission of simple commentary. To take the example of Hamzah Fansuri: his work is original in a number of senses. First, he wrote in Malay for a Malay intelligentsia for whom *Syariah* alone, without spirituality, was a negation of one of God's gifts. The Malay language, the language of expressing *tassawuf,* was a new form of expressing Ṣūfī Islam, pointing to an original Indonesian philosophy. Central to this is the concept of gnosis, which was insisted on by Hamzah. It is this insistence that allows for changes in the structure of consciousness which was the main determinant of his work in Malay. His influence in Indonesia was, and remains, immense. To the '*Syariah*-minded', however, his position gives overemphasis to one aspect of Islam to the detriment of the rules derived from Arabic scholarship. The locus of authority was seen as having shifted from '*ulāmā*' to the teacher 'without (social) responsibility'. It is this which later commentators mean when they say that the success of Islamic penetration into Indonesia is because it was introduced 'in the Ṣūfī mode', so allowing for an accommodation with an already existing pantheism. This may be true to the extent that various types of non-scriptural ritual were and are found in Indonesian cultures. In other words, the fear of the *Syariah*-minded is the sin of *syirk*. The Ṣūfī assertion—'I am He'—is the anathema. But it also remains true that Hamzah's thought does allow for the Islamic theological mode of discourse to acknowledge pre-existing philosophies. Herein lies its originality. What the correct boundaries for this discourse are to be was and is debatable.

Third, there is a further text dimension—'Islamic literature';[35] that is, the ways in which existing themes or structures existing prior to or next to (the religion of) Islam expressed or came to express Islamic beliefs.[36] The text milieux were the royal courts of Java, Sumatra and Malaya. These provided the necessary literary environment, and the texts emanating from them show various connections between Islam and its environments. In the sphere of temporal dominion one can also read the *Sejarah Melayu*, the basic classical text describing the concepts of sovereignty and duty in pre-modern Malay thought to show a direct connection between rule and religion. This is only one example.[37] Outside the sphere of temporal dominion one can also read certain Javanese mystical texts, for example the *Sĕrat Cabolek*, to show a harmonisation of Javanese mysticism and Islamic precepts. But there are also texts from outside the courtly environment, from the milieu of the *pesantren*, the home of Muslim spirituality. From here we have moral tracts, romances, tales of wanderers in search of enlightenment and so on. A famous example is the *Sĕrat Centhini*, possibly composed in East Java,[38] which shows that rural spirituality can be both pre-Islamic but expressible in Islamic terms. Other examples are the *Suluk Wujil*, again from East Java, which blends the cultures of the Hindu-Buddhist court world with Sufism, and the *Sĕrat Yusup,* the Joseph tale in Sura XII which equates the village Joseph with the poetic court hero, Panji.[39] In other words, the literature is complex and subtle, including the use of pre-Islamic cultural forms.

Fourth, and finally, the translation of Islamic prescription into Indonesian daily life has been a complex and inconsistent process (as indeed it remains today). The contemporary ethnographic evidence[40] demonstrates that there is no one explanation of what constitutes acceptable Islamic practice for all the Malay-Indonesian world. There is no reason to doubt that this was the case historically as well. There were and are variant forms of belief that may be seen as a reinterpretation of Islam in local cultural terms. Professor Ellen calls this 'practical'[41] Islam, by which he means the ways in which ordinary people order and articulate categories, symbols and the relations between them in the pursuit of comprehension and formulating social practice. He isolates four major themes. First, he draws attention to the remarkable diversity of religious practice in Indonesia. Second, he considers the Islam-custom issue. Third, he finds Islam has a role in the identification and legitimising of social action, including especially conflict and solidarity. Finally, he examines the sociology of Islamic institutions. While he uses contemporary data, there is 18th–19th-century evidence[42] to show that compromise, syncretism and even localised sophistries are the norm for Indonesian Muslim societies. In short, the question 'What is a "Muslim"?' is or can be as problematic now as it was in the past.

I have said enough to demonstrate that Indonesian Islam has its own peculiar characteristics.[43] Any study of 'reform' must proceed from these data; but there is one further crucial characteristic of which we must be

aware. That is the Dutch presence in the then NEI and the status of Islam in this period of colonialism. The Middle East experience was not the same as the Indonesian.

Islam in the Netherlands East Indies

Like all other Western powers that had dominion over Muslim lands, the Dutch thoroughly misunderstood Islam. The VOC of course was not interested in nor was it equipped to understand the religion. Its sole aim was to trade with profit. The 19th-century colonial government was better equipped, but again its knowledge of Islam was quite narrow and directed towards the maintenance of order in the NEI. It should also be remembered that Dutch control, Indonesia-wide, was established only comparatively recently (early 20th century) and, especially relevant for Islam, that the bitter Aceh war was not concluded until 1903. Resistance to colonial expansion was, more often than not, in the name of Islam. This response directed early Muslim activist attention to the Egyptian intellectual answers to Western domination, but the peculiar facts of the Dutch colonial dealings with Islam conditioned the ways in which Indonesian Islam came to be formulated.

We begin, therefore, with the early 20th century Dutch period, at which time the colonial policy and administration had settled into its final form vis-à-vis Islam. It had a number of features.

The starting point or, better, the underlying colonial position was that Islam, because it was an alternative (indigenous) theory of sovereignty, had to be suppressed. This was not only politically justifiable but was also in accord with the facts of native life: that is, the Indonesians were not, as a matter of fact, 'really' Muslim or 'proper' Muslims, with some exceptions (e.g. Aceh). Snouck's often-cited[44] passage is indicative of this view:

> Whoever . . . clothes himself according to the customs of the Muslims . . . abstains from eating pork and drinking wine and hates the *kafir*, is considered by the community as a Muslim, that is if he is not known as a malefactor. If in addition, he takes care of a few important religious duties, he is already considered a devoted person. And whoever is not quite objectionable in the eyes of the *faqih* [experts in fiqh], is regarded in the community as belonging to the most worthy people.

However objectionable this statement might now read for us, it did lead to a much more rational appreciation that something had to be done about Islam. Political suppression at the end of the 19th century was one thing; the practicalities of day-to-day administration were quite another. Indonesians *believed* themselves to be Muslim, despite the fact that they were legally classified as 'Natives' and hence subject to *adat* (customary law). The fact is that Indonesians were both Muslims and subject to *adat*—the respective spheres of each were not sharply distinct in local thought. In fact,

boundaries were purposely blurred and, except in rare instances and usually for ulterior motives, compromise was normal. Sharply distinguished jurisdictions, with all their potential for conflict, were strongly discouraged. Snouck himself advocated respect for both Islam and *adat* and did not approve of some either/or solution. In the event, the colonial government attempted a compromise which took three (related) forms.

Judicial

In 1882 a *Priesterraad* ('Priest Court') was established[45] for Muslims of Java and Madura. It was a collegiate tribunal to administer 'Islamic law'. However, jurisdiction was limited to marriage, divorce and inheritance. There was no very close definition of any of these. More seriously, the judges of the *Priesterraad* could not enforce their own decisions but had to request enforcement from the judges of the (secular) *Landraad*. In many cases, perhaps a majority, this was refused. In essence, then, the Religious Court judges were merely advisers. There was much resentment on the Muslim side at this state of affairs. Reform was long in coming, and it was not until considerable agitation by *Sarikat Islam* among others[46] that anything was done. However, the legislation, when it did come, actually narrowed the field of the Muslim judicial competence.[47] It reduced the status of the *Qāḍī* (*Kathi*) (*penghulu* in Java and Madura), making him, in effect, little more than a registration officer for marriage and divorce. The rules were considerably amended in 1937. The Religious Court held exclusive jurisdiction in marriage and divorce, including validating the condition for *ta'alik* divorce and *mas kawin* (dowry). There was no jurisdiction over any matter dealt with in the civil laws of marriage. For the first time a limited power to enforce its own decrees in some matters was permitted. Where a matter within its jurisdiction arose in a civil court, then the latter was required to refer it to the Religious Court. The regulations also established an Appeal Court, although it came too late in the colonial era to have any impact.

It should be noted, however, that the regulation was heavily procedural in content and function. The greater part of it is in fact concerned with process (filing of documents, powers of assessors, payment of fees and recording of judgements). No effort was made to state principles of *Syariah*.[48] The result was a highly formalised system, extremely bureaucratic in nature and with a limited jurisdiction. Even the judges (*penghulu*) had to take their oath of office in the form prescribed for judges of the civil courts. In short, the *Syariah* never obtained the status of a 'Muslim personal law' as in the neighbouring British possessions. On the contrary, the *Syariah* had no real place of its own in the colonial plural law system. Its existence was minimal, and even this was conditional on an acceptance by some *adat* to the limited extent just described. The *Syariah* was never an 'equal' system. Indeed, in some sensitive areas of law quite basic principles of Muslim family law were directly overridden, causing considerable social turmoil.[49]

The legislation just outlined has to be read as one aspect of colonial legal policy with respect to Islam, and it can only be understood as such. The 1920s and 30s were a period of increasing anti-colonial agitation, much of it having a strong Muslim element. It was the colonial response to this agitation which determined the nature of Islamic legal jurisdiction to an extent far greater than that affecting the other native (*adat*) laws of Indonesia. Religion was bound up with politics and, as the law was an integral part of religion, its substance and application were equally political in nature. The explanation for the legislation lies in this fact and not in the formal requirements of Islamic legal thought. It is for this reason that, in formal terms, the legislation is unique in Southeast Asia as containing no substantive restatement of Islamic principle. Indeed, information on the substantive law applied in the Penghulu Courts or the High Court for Islamic Affairs is wholly lacking. It seems to have been assumed that *fiqh* was applied simply by virtue of *Penghulu* participation.

Further, among the ranks of the Indonesian nationalists there was little sympathy for the Muslim cause. Secular nationalism, which had a monopoly on the material resources of protest, saw in Islam a threat to its future scheme for an independent Indies. The Muslim position, which was both peasant-based and out of sympathy with socialist and liberal ideologies, looked to the creation of a state having recognisably Islamic features. The question, therefore, was not the application of the law as such but the scope of the law as a part of political policy. Where this is the view of law that prevails, it is not to be wondered at that its effective implementation is sometimes sporadic and uncertain.

To sum up: Islamic law in colonial Indonesia can be understood only as an aspect of colonial politics. The paucity of legislation and its minimal content—almost entirely concerned with jurisdiction—was an aspect of the plural law policy and the politics of Islam. These characteristics have persisted into the contemporary period.

Books as sources of (Islamic) authority

Islam is a law based on scholarship, and so the definition of prescription depends on the books available for instruction and reference. While the Dutch were controlling the public aspects of Islam as just described, Islamic education was continuing in *pesantren* and *pondok* throughout the archipelago. We do know which books were used both for the late 19th century[50] and for the present.[51] These were the classical texts[52] in both Arabic and Malay and, from the end of the 19th century onwards, the new reformist publications from the Middle East (see above). The Dutch response was again consistent—control of publication and, especially, teaching. The latter was early regulated by an Ordinance of 1905 (applicable only to Java), the so-called 'Teachers' Ordinance'.[53] This provided that written permission was required for instruction to be given in Islam, that lists of courses and pupils were kept and methods of government supervision were set out. The

Ordinance was replaced in 1925,[54] doing away with the requirement for permission but still requiring data as to pupils and curricula on prescribed forms. This Ordinance applied to Java and, under various later decrees, to other areas of Indonesia. It caused considerable resentment, amounting to opposition in a number of areas;[55] in Minangkabau, for example, the opposition was strong enough to force a withdrawal of the plan. There were further attempts at educational regulation in the 1930s which, while not aimed specifically at Muslim institutions, were to a similar effect. They had only moderate success.[56]

It should be borne in mind, however, that the combined effect of these two Ordinances was significant in a quite unexpected way and in a most unexpected place. This is Aceh in the 1920s and 30s, and the evidence comes from Hasjmy's '*Ulāmā*' *Aceh* published in 1997. Aceh is of course well known for being 'fanatically Muslim', whatever this might mean. Hasjmy's book consists of brief biographical accounts of the lives and careers of 18 Aceh '*ulāmā'*, with a focus on their anti-colonial activities and efforts in preserving Islam and Aceh civilisation. The names are famous locally[57] and include such major figures as Hasballah Indrapuri (1873–1959), Teungku Abdurrahman Meunasah Mencap (1897–1949) and Tuanku Raja Kermala (1880–1930). While all engaged in anti-Dutch activity of various sorts and at various times, they also used the education Ordinances as models or frameworks for their own educational institutes. This is an early example of what appears to be a submission but is in fact a use of colonial administrative technique for quite another purpose.

There is another aspect of Dutch control in the field of education and books, and quite a subtle one. This was to produce authorised texts for use in instruction and administration. A good example which has recently been the subject of some attention[58] is the work of Sayyid ʿUthmān ibn Yahya (1822–1913), in particular his *Kitāb al Qawānīn al-Syarʾiyyah li ʿAhl al-Majālis al-Hukūmiyyah wa al-Iftāʾiyyah.* ʿSayyid ʿUthmān (Usman) was of Hadhrāmī descent and was *Muftī* of Batavia and adviser (Honorair) to the colonial government for Arabic and Islamic Affairs. He was a close friend of Snouck Hurgronje, who described him as an 'Arab ally' of the NEI government. His accommodationist attitude makes him a controversial figure in the history of Indonesian Islam.[59] His *Kitāb al Qawānīn* is a long text, and is still in use as an 'official' text[60] which judges of the religious courts are recommended to consult.[61] It is not an original work but consists instead of summaries of those parts of *Syariah* which a state administration would find necessary. It has sections on sources of law, recommended texts,[62] methods for deriving rulings, qualifications for judges, and basic rules on marriage, divorce and inheritance.

Another example, from the same time, is a similarly titled text, *Kitāb al-Qawānīn . . .'* (The Guidance of Principles for the Duties of Judges and Government Officers). This is described by Professor Lubis[63] as following 'the model of colonial statutes'. In other words, it is an administrative

handbook, based in this case on the works of ʿAbd Allāh Dahlān, the Shāfiʿī *imām* in Mecca. Texts such as the two just indicated contributed to the control of Islam by way of selective interpretation, amounting at times to severe distortions of *fiqh*.[64] Dutch scholars, such as Snouck Hurgronje, were well aware of this.

International Islam—the Haj

Like the other colonial powers the Dutch regarded international Islam with suspicion, in particular the *Haj*, which was seen as a vehicle for the transmission of anti-colonial sentiment. Some comments by the Christian missionaries in Indonesia approach the hysterical.[65] To some degree this is understandable, given the history of resistance to Dutch rule in the name of Islam and the long connection between parts of Indonesia (especially Aceh) with the centres of Islamic power in the Middle East and Asia Minor.[66] The spread of Wahabism in the mid-19th century to Sumatra was also of concern.[67] On the other hand, Snouck Hurgronje was doubtful whether the *Haj* on its own contributed much to anti-colonial sentiment.[68] He held instead that it was among the long-term stayers, whose education exposed them to the idea of a Muslim commonality (pan-Islamism), that ideas of resistance were likely to be manifested. In this he was right: the threat was intellectual and hence long-term. It manifested itself in the early 20th century, but by this time it had an input from the West as well (below).

Nevertheless, the Dutch took steps to control the *Haj* although, looking back now from over a century, the motives were clearly mixed. On the one hand there was the security of the colonial system itself. After all, the Ottomans were still *the* power in Asia Minor and the Middle East. Despite the incursions of Napoleon, the opening of the Suez Canal (in 1864) and the rapid spread of European extraterritoriality, Islam was still an international force in the then global politics. Internal security in the NEI required control over the movement of Muslims to and from the centres of Islam. This came to be concentrated on the *Haj*, and the 19th century saw ordinances by governments attempting to do this. The earliest dated from 1825, later amended and not withdrawn until 1902. The ostensible purpose was to ensure that each pilgrim had enough money to undertake the *Haj*. At the same time, returning *Hajjis* were supposed to undergo an examination as to what they knew of Islam and Mecca! This was and is a nonsense.

Connected with this, and in the same spirit, the Dutch opened a consulate in Jeddah in 1872. The motive was partly control but it was also felt necessary to pay some attention to the welfare of pilgrims. Destitution among them and even debt bondage were not uncommon.[69] Nineteenth-century imperialism certainly demanded some effort in this matter, which was also an aspect of internal colonial security. All colonial powers wished to demonstrate control over their respective subject peoples at all times and in all places, even abroad. This was all the more necessary in the face of a global religion which was also the religion of the majority in the NEI.

The three aspects of Islam in the NEI I have just outlined are linked to one another. In sum they deny any natural Islamic presence in public life. On the contrary, any Islamic presence was limited and minimal. From the Muslim point of view this was insupportable.

Post-independence Islam

The Japanese interregnum (1942–45) gave Islam[70] a direct place in the new politics of independence, and Islam has remained at the centre of Indonesian politics for the last half-century. However, in formal constitutional terms, its status has always been tangential rather than central.

An Islamic constitutional presence first appears in the Jakarta Charter (June 1945), as follows:

> Further, in order to establish a government of the state of Indonesia which shall protect the entire Indonesian people and the whole of the land of Indonesia, and in order to promote the general welfare, to improve the standard of living, and participate in establishing world order founded upon freedom, eternal peace and social justice, therefore the independence of the Indonesian people is embodied in a Constitution of the state of Indonesia, which Constitution shall establish a Republic of the state of Indonesia in which the people are sovereign and which is based upon: *Belief in the One Supreme God with the obligation to carry out syariah for adherents of Islam*, a just and civilised humanitarianism, the unity of Indonesia, and a Democracy guided by wisdom arising from consultation and representation, which democracy shall ensure social justice for the whole Indonesian people. [Emphasis added]

However, this was replaced in a matter of months (17 August 1945) by the following preamble to the 1945 Constitution (*Undang-Undang Dasar*):

> Thanks to the blessing of God Almighty and impelled by the noble desire to lead their own free national life, The People of Indonesia do hereby declare their independence.
>
> Following this, in order to set up a government of the State of Indonesia which shall protect the whole of the Indonesian People and the entire native land of Indonesia, and in order to advance the general welfare, to develop the intellectual life of the nation and to contribute in implementing an order in the world which is based upon independence, abiding peace and social justice, the structure of Indonesia's National Independence shall be formulated in a Constitution of the Indonesian State which shall have the structural form of a Republic of Indonesia with sovereignty of the people, and which *shall be based upon: Belief in the One, Supreme God*, [emphasis added] just and civilised Humanity, the unity of Indonesia, and democracy which is guided by the inner wisdom in the unanimity arising out of deliberation amongst representatives, meanwhile creating a condition of social justice for the whole of the People of Indonesia. [Emphasis added] [official Translation]

While God retains His exalted position, He is no longer Allah! When read with the rest of the preamble, He can even be seen as a 'secular' God

in practice. This is not an altogether uncommon idea in post 18th-century constitution-making for nation-states, where God routinely appears but just as routinely has nothing much to do with the nuts and bolts of power and sovereignty.

On the other hand there are two features of the 1945 Constitution which have direct implications for Islam. First, it is very short—only 37 articles of about 4000 words in total. The whole thrust of the document is to locate unlimited executive power in the President. Actual laws, therefore, emanate from the President and include his own Instructions (*Instruksi Presiden*), which have the force of law. This feature has been described elsewhere[71] but is especially significant for Islam, because the all-important 'Compilation of Islamic Law' (see below) emanates from this source. The 1945 Constitution, in other words, is minimalist in the extreme. Looking back over the past 50 years this should have been to the advantage of the Muslim side of the argument, but it has not been so. Apart from political incompetence, the major reason is in the terms of the 1945 Constitution, where the terminology used in the Elucidation[72] (itself almost the same length as the basic text) is purely 'European' in style and implication although the context is 'Indonesian'. The following extract illustrates this:

> The written Constitution of a state is only part of the Law which is the basis of the state. The Constitution is that part of the Fundamental Law which is written down, which besides that Constitution there also prevails a Fundamental Law which is not written down, namely, the basic rules which arise and maintained in the practice of running a state, although they are not written down.
>
> Certainly, in order to study the Fundamental Law (Droit Constitutionnel) of a state, it is not enough only to study the articles of its written Constitution (Loi Constitutionnel) alone, but one must also have studied how it is applied and what is the spiritual background (Geistlichen Hintergrund) of that written Constitution.
>
> The Constitution of any state whatsoever can not be understood if merely its text is read alone. Truly, to understand the meaning of the Constitution of a state, we must also study how that text came into being, we must know the explanations made of it and we must know under what conditions that text was made.
>
> In this way we shall be able to understand what is the meaning and purpose of the Constitution we are studying, and what current of thought it was which became the foundation of that Constitution. [Official Translation]

Where is religion? What does 'Belief in the One Supreme God' actually mean? According to the Elucidation, the government must:

> . . . nurture the nobility of human character and hold fast to the moral ideals of the people.
>
> The above fundamental ideas pervade the spiritual background of the Constitution of the State of Indonesia. These fundamental ideas give rise to

> those ideals of law (Rechtsidee) which dominate the Fundamental Law of the State, both written law (the constitution) and unwritten law.
>
> The Constitution gives form to these fundamental ideas in its articles.
>
> We must always remember the dynamic of the life of the Indonesian society and state. The Indonesian society and state are growing, the era is changing, especially during this present period of physical and spiritual revolution.
>
> Therefore, we must live dynamically, we must watch every kind of movement in the life of the Indonesian society and state. In that connection, let us not precipitately crystallise, provide form to (Gestaltung), ideas which can still easily alter.
>
> Certainly, it is the nature of those written rules to be binding. For that reason, the more flexible ('elastic') those rules are, the better. Thus we must guard against the constitutional system being left behind the times. Let us not go so far as to make a constitution which is quickly outmoded (verouderd). What is extremely important in the administration and in the life of the state is the spirit, the spirit of the authorities of the state, the spirit of the leaders of the administration. Although a constitution is drawn up which, according to the letter, is characterised by the family principle, if the spirit of the authorities of the state, the leaders of the administration [are] individualistic, that constitution is certain to have no meaning in practice. On the other hand, although that constitution is not perfect, if the spirit of the authorities of the administration is good, that constitution will certainly not obstruct the course of the state. Thus what is most important is the spirit. The spirit is a living thing, or, in other words, it is dynamic. In this connection, only the fundamental rules alone must be laid down in the constitution whilst what is necessary for executing those fundamental rules must be left to statutes.

The technical terms used are French, Dutch and German. The language of the text is Indonesian, as are its contents. The document was written in haste for the conditions of 1945, at the end of the Japanese occupation and at the start of what turned out to be a bitter and bloody war for independence. It is as well for us now to reread these extracts and to visualise the *Syariah* in this framework.

A little earlier I mentioned the minimalist nature of the Constitution. This is true, but it is certainly not true that the Islamic presence in the nation was itself minimal. The *pesantren*, the traditional institutions of learning, continued (as they do today). More to the point on the constitutional side, a Ministry of Religion was established in January 1946 with a wide range of functions. The most important are the regulation of marriage and divorce, the organisation and staffing of the religious courts, and the supervision of religious foundations (*wakaf*). These functions were an advance on the prewar position. Most importantly, they introduced a unitary scheme of *Syariah* administration. This, for the first time, gave Islam a significant bureaucratic presence. However, the formal administrative jurisdiction of the Ministry and its various components remained rather restricted. The Ministry's effect on the substantive private law of Muslims has been minimal. Its main functions are political—to promote religion generally,

and Islam in national politics particularly. Its lesser administrative function is to regulate marriage and divorce by insisting on bureaucratic procedures. The religious courts (*Pengadilan Agama*) have been left to effect the necessary reforms (see below).

The Jakarta Charter tried and failed to set an agenda for Islam in the state which is, in essence, a secular state. But this does not mean that Islam has no constitutional relevance. It does, but in a reduced sense as one ideology among others, the function of which is to legitimise the current state. This appears in the form of Pancasila, the well-known and often asserted five fundamentals on which the Indonesian state is, or claims to be, based. The principles of Pancasila most important to *Syariah* are its first, a Belief in One Supreme God, and the fourth, which embodies a commitment to democracy. For Muslims, the reference to God embodies the Qur'ān and the Sunna (practice of the Prophet as reported in *Hadīth*, tradition). However, the mention of democracy refers to a political system for which the Qu'rān and the Sunna provide no direct authority. There is of course an Indonesian dimension to these comments. Democracy can be 'guided', and the words of God, which is how we know Him, can be interpreted variously and through the ages.

In short, there are no certainties for *Syariah* in Pancasila—a constant theme in Indonesian Islam since Independence. There are excellent current examples on the debate. For example, Dr Bambang Pranowo[73] poses a pertinent question: 'Which Islam and which Pancasila?'. He notes that the former New Order government seemed to be moving towards an interpretation of Pancasila which, while viewing it as an incorporated whole, also seems to be playing down its secularity. In his view, some degree of Islamic infusion into at least the first *sila* had become New Order policy. He instances the use of the specifically Islamic term *taqwā* (recognition of the majesty of God) in a wide variety of contexts, including the oath which government officials must take and the P4 Guidelines. Pranowo gives other examples, and concludes that the New Order interpretation of Pancasila was 'more religious' and hence more acceptable to 'modernist' Islam.[74] Whatever the fate of Islam in post-New Order Indonesia might be, it seems clear that it will be determined by argument that is essentially secular.

Until about ten years ago, the status of *Syariah* in the Indonesian legal system was as much as the Dutch had left it. It had a minimal presence.[75] However, in 1989 and in 1991 two important initiatives were undertaken—a new law on religious justice and a new Muslim Code (the '*Kompilasi*'). Both have been described elsewhere[76] and there is space here only to indicate the main outlines for each.

Basic Law on Religious Justice, No. 7 of 1989. It consists of a Preamble and seven chapters. There are three noteworthy features of the Preamble. First, religious justice is described as pertaining to the certainty of law, itself a primary function of Basic Law No. 14 of 1970 on Judicial Power.

This reference to the general court structure of the Republic of Indonesia clearly indicates the full integration of Religious Justice within the national court system. Second, the pre-existing regulations on the religious courts (i.e. the colonial and immediate post-colonial regulations) are described as 'disjointed' and thus not suited to a national system of judicial administration. Third, the Preamble proposes a 'unified law . . . in a national legal system . . .' based on Pancasila and the Constitution of 1945.

General Provisions (sections 1–5). These sections formally establish religious courts and a Religious Appeal Court. For our purposes, the most important section is 5(1), which states that 'the technical development of justice in the Religious Court shall be undertaken by the Supreme Court'. However, responsibility is not totally within the ambit of the Basic Law No. 14 of 1970 on Judicial Power. Section 5(2) of the Basic Law on Religious Justice states that the Minister for Religion is to be responsible for the organisation, administration and finance of the religious courts. According to the Basic Law on Judicial Power and the Basic Law No. 14 of 1985 on the *Mahkamah Agung,* the Supreme Court has a general supervisory jurisdiction exercised through cassation (*kasasi*). This provision was intended to establish the Supreme Court as the final arbiter over matters arising from all branches of the Indonesian judicature. Until recently, it appears that the Director of Islamic Justice within the Ministry of Religion resolved appeals from the lower-level religious courts.

The Composition of the Court (sections 6–48). These sections establish the qualifications the religious judiciary must hold, and provide for the appointment and dismissal of judges and administrative staff. A judge must be a public servant and a 'graduate in *Syariah* law or a graduate with a mastery of Islam'. Neither qualification is further defined. All officers of the Court must take an oath in the name of Allah and swear to 'be faithful to and defend and apply the Pancasila as the basis and ideology of the state, [and] the Constitution of 1945 . . .'. This part of the Act also regulates the perennial subject of jurisdiction. The Minister for Justice, Minister for Religion, Chief Justice and the Attorney-General and, of course, the President generally share authority over the appointment, dismissal, suspension and arrest of judges. The President appoints and dismisses Religious Court judges on the advice of the Minister for Religion with the assent of the Chief Justice of the Supreme Court (15(1)). If a judge acts criminally, negligently or culpably, the Chief Justice and the Minister of Religion must formulate appropriate investigation procedures (s 19(3)) to ascertain whether he should be removed. The President can suspend a judge from office on the advice of the Minister for Religion with the assent of the Chief Justice (s 21(1)). A judge can be arrested by the Attorney-General (*Jaksa Agung*) with the assent of the Minister for Religion and the Chief Justice. The Minister for Religion has jurisdiction over those matters with regard to

lower-level administrative staff and generally supervises Religious Court judges (section 12(1)). The new legislation has been in operation now for almost ten years but we are little wiser as to how it actually works. The reported *yurisprudensi* is sparse and, when available, minimalist. The only constant feature is the use of Pancasila as a sort of basic reference point, but this tells us nothing about legal reasoning.

The Powers of the Court (sections 49–53). Two points of particular interest emerge from this short chapter of the Act. First, section 49 establishes the courts' jurisdiction over marriage, inheritance and *wakaf*. However it goes on to provide (s 49(2)) that marriages are to be 'based on or regulated by the operative marriage laws'. This is a reference to Basic Law No. 1 of 1974 on Marriage, which, as will be discussed below, is also cited in the Compilation. The significance of this section lies in its reference to *Syariah* as defined in a state law—it is not a reference to *Syariah* alone. Second, section 50 provides that where property or 'other civil matters' arise in cases of marriage, inheritance or *wakaf*, the general courts—that is, the civil courts—must first decide the issue. This provision retains the colonial practice of separating property matters from personal relationships. As mentioned above, it is practically impossible to split jurisdiction in family law this way (with the possible exception of *wakaf*). Therefore, this provision is often avoided using various devices (especially *fatwā*); at worst, it is inoperable.

Law on Procedure (sections 54–91). This section is divided into three parts: a general section, investigation of marriage disputes, and fees. There are two interesting features in the general provisions. First, the religious courts must follow the laws of Civil Procedure operating in the civil courts (54). The particular legislation is not actually specified. Second, section 62 states that all decisions must 'contain the provisions of relevant regulations on the unwritten source of law which forms the basis of the decision'. This may be a reference to *adat* or local Muslim practice. Indonesian *yurisprudensi* must be examined to answer this question. Regarding marriage disputes, the court's function is solely to regulate divorce. The sections relevant to divorce in this chapter are clearly aimed at controlling the process of divorce by removing it from individual initiative and subjecting it to administrative procedure and, hence, delay. The same steps were taken in Singapore in the late 1950s and slightly later in Malaysia.

The *Kompilasi Hukum Islam* ('Compilation of Islamic Law', 1991) is certainly the most important document on *Syariah* promulgated in modern Indonesia. The idea of enacting a 'Muslim Code' or 'Islamic Code' is not new. It has been discussed, to my knowledge, for the past half-century, and in earlier years. The Pancasila surrounds the Compilation. Section 1 of the Elucidation states:

> For the people and nation of Indonesia which is founded upon the Pancasila and the Constitution of 1945 there is a right to the existence of a single national law which will guarantee the continuation of religious life based upon the principle of Belief in One Almighty God, while simultaneously representing the embodiment of the legal awareness of the Indonesian community and people.

The Compilation is not a Law (*undang*), but 'a guide to applicable law for Judges within the jurisdiction of the Institutions of Religious Justice in solving the cases submitted to them' (Elucidation, 5). Sections 3 and 4 of the Compilation's explanatory memorandum or Elucidation—which like all Elucidations that accompany laws in Indonesia should be read as part of the text of the law itself—appear to state what the 'applicable law' is, by setting out the following sources for *Syariah*: (a) standard texts of the '*Shafii madhhab'*, (b) 'additional texts from other *madhhab'*, (c) existing '*yurisprudensi'*, (d) 'the *fatāwā* of '*ulāmā*', and (e) 'the situation in other countries'. This is a formal acknowledgement of eclecticism for sources of *Syariah*. The Compilation claims to be a summary of these sources for use by Religious Court judges, but seems to overlook the *Kitab Kuning* ('yellow books') which are the bases for instruction in the *Pesantren* (local Islamic schools).

The Compilation came into force by way of Presidential Instruction. The authority for Presidential Instructions is found in section 4(1) of the 1945 Constitution, which merely states that the President 'holds the power of government in accordance with the Constitution'. The Presidential Instruction directed the Minister of Religion 'to implement the Instruction'. The Minister then issued a 'Ministerial Decision' to implement the Instruction. The Decision declares its own legal basis to be section 17 of the 1945 Constitution, which states that 'Ministers shall lead Government Departments' (s 17(3)) and 'assist the President' (s 17(1)). The decision provides detailed instructions to various government agencies to 'apply the Compilation in conjunction with other laws'. Neither the Ministry of Justice nor the Supreme Court is mentioned. The Ministerial Decision refers to the Religious Ministry's own decisions on Organisational Structure. In other words, the Compilation is a bureaucratic handbook.

The Compilation itself consists of three books. Book I concerns Marriage Law (s 1–70); Book II relates to Inheritance (s 171–214); and *Wakaf* is the subject of Book III. The colonial legislation regulated these same three subjects. The provisions of the Compilation, however, are far more detailed. What follows is a discussion of some of the issues arising out of the Compilation.

The contents of Book I on Marriage (which includes divorce) fall into three categories: (a) straight-out reproduction of *fiqh*, though in a much simplified form; (b) *fiqh* rules, the operation of which are contingent on the completion of bureaucratic procedures; and (c) rules of *fiqh* as amended or

controlled by the judicial process in the religious courts. These categories will be discussed in turn.

Several points flow from the straight-out reproduction of *fiqh*. First, the Compilation's rules are very simple statements: they are obviously drafted to be understood by judges with only limited knowledge of *fiqh*. The implication of this appears to be that these simple versions are themselves sufficient for adjudication on *fiqh*. However, this view is subject to confirmation by post-1991 *yurisprudensi*. That there is no mention of any classical text tends to support this conclusion. Additionally, although it may be assumed that the rules are taken from the *madhhab* Shāfi'ī this is by no means proved.

The rules of *fiqh* that have been put into bureaucratic formulae are also interesting. Chapter XVI of the Compilation deals with Termination of Marriage. Sections 129–142 and 146–148 require a daunting quantity of paperwork to be completed before a marriage is validly terminated. Although these 'rules' do not affect the substance of *fiqh*, they subject it to a secular process which actually *determines* its application. Without procedural compliance, the *fiqh* will not be applied. Thus, a husband who wishes to declare *ṭalāḳ* (repudiation) must submit an oral and a written request to the Religious Court. If the judge permits the *ṭalāḳ*, then copies of the declaration are made and registered 'as evidence of the divorce'. The Law also contains provisions regulating the summons to attend court hearings. Various methods of delivery are specified, including the requirement that it be displayed on public notice boards and in newspapers. There are further examples of *fiqh* being restricted by bureaucratic procedures in the compilation. The purpose of these restrictions is to control personal status. The state has a vested interest in this because divorced wives and fatherless children throw a burden onto state agencies. The '*ulāmā*' still equivocate. On the one hand, the much-abused *ṭalāḳ* is Divinely permitted; on the other, the social consequences are plain for all to see. To retain the Divine permission but to formulate a bureaucratic obfuscation is a sensible response (see below for *fatāwā* on this issue).

As to instances where the rules are amended and controlled by judicial processes, the policy of the Compilation is clearly stated early on in the text. According to section 4, the validity of a marriage is determined by (a) *Syariah* and (b) the Marriage Law of 1974. *Syariah* alone is insufficient. For example, the Marriage Law regulates the age at which people may marry. A Muslim man's right to take more than one wife is likewise severely restricted. To enter into a polygamous marriage, the man must obtain permission from a Religious Court. Without judicial approval, the marriage 'shall have no legal force' (s 56(3)). Referring to section 5 of the Basic Law on Marriage of 1974, the Compilation states that he must also obtain the permission of his existing wife or wives (s 58(1)). A wife's refusal to grant permission is not absolute; the Religious Court may override it if the wife is barren, unable to fulfil her marital obligations, or has an incurable illness

(s 59 referring to s 57). However, the husband must still show he is capable of behaving justly towards all his wives and children, and ultimately this will be a matter of fact for the court.

Other provisions of the Compilation have a similar effect. For example, chapter X aims to prevent any marriage forbidden by 'legislation or Islamic law'. The Religious Court has jurisdiction over the matter, but the Marriage Registration Officer (Clerk), who must also be informed of the marriage, is forbidden to 'implement or aid in the implementation' of a marriage which contravenes the Marriage Law of 1974 (s 8, 68–69). Similarly, the Compilation sets out two methods for the termination of marriage (Chapter XVI): *ṭalāḳ*, or a 'claim for divorce' (s 114). The grounds for divorce are set out in section 116. This part of the Compilation appears to aim to control *ṭalāḳ* and give the wife an avenue to initiate divorce. *Ṭalāḳ* is controlled by way of judicial supervision. The Religious Court may refuse a request by a husband for *ṭalāḳ*, but the refusal is open to appeal and cassation (s 130). A wife may submit a claim for divorce on specific grounds, which include desertion for two years, lack of a harmonious domestic life, and imprisonment of the husband for five years. In addition, the court may order alimony payments and the protection of the wives' assets during the period of the divorce claim. The important conclusion is that *ṭalāḳ* is controlled, and the wife has an initiative outside of and separate from *Syariah*. The remainder of Book I merely repeats *Syariah* rules in simple form. The same is true for Book II (Inheritance) and Book III (*Wakaf*). In these two areas, the Compilation is concerned with administrative procedures, and there are no substantive variations on the *fiqh* rules.

It is clear from these remarks on constitutional and legal Islam that the religion is the subject of an almost total state executive control located in the office of President. Ultimate authority rests there, not in Revelation. At the practical level, the *Syariah* is now thoroughly bureaucratised, indeed trivialised, in the Compilation. In a real sense this is the logical outcome of a process begun by the Dutch 150 years ago.

THE NEW SCHOLASTICISM IN INDONESIA, 1900–1990s

The legacy from which the first wave of reformers had to proceed consisted of their own Indonesian Islam, its status and content under the Dutch and, from about 1900, the new Middle East intellectualism. It should come as no surprise, then, that the Muslim response was variable and that the leading figures were in competition more often than not. Personalities were as important as principles, and over all hung the colonial presence. There was general agreement that Indonesia must have independence, but whether the new state was to be 'based on' Islam or in secularism was not agreed. Secular nationalism, then, is the extra complicating factor.

The politics of the period are unedifying and have been fully described in other works.[77] We can better use the space available here to trace the two

fundamental issues of the time. These were: (i) What is Islam? and (ii) What is its relation to the (colonial) state? Both questions of course persist into the contemporary period.

The Muslim response to colonialism 1900–1940s

Before confronting the issue directly it is as well to remember that the context within which it took on its special importance was the subjugation of Indonesian Islam to secularism. It was the Dutch who first put forward the question, 'What is Islam now?', and perhaps even determined the agenda for the answer. Of course, Islam has always had to answer the question but previously within the *umma* and within a common discourse. This had well and truly gone by the mid-19th century; the conditions within which Islam and Muslims existed were no longer susceptible to known answers from the texts. This raised and still raises a real issue in epistemology. Classical logic could not, initially at least, answer the actual problems generated by the new conditions within which Islam found itself. On the contrary, it was foreign science which defined these and, even more seriously, claimed to be able to determine the probability of truth (and falsity) of Islam itself—even purporting to analyse Revelation.[78] An important part of the agenda to reply to European rule was found in ʿAbduh, Rāshid Rīḍa and others whose work was itself determined by this agenda. For Indonesian Muslims, the local version was additionally to be found in the newly influential educational systems of the NEI. Not only were Muslim children beginning to take part, so also were the '*ulāmā*' in redesigning their own curriculum. The leading reform group of the time, Muhammadiyah (founded 1912), had an extensive education program from 1917 onwards, plus ancillary activities such as scout groups. It is impossible to suppose that these and similar initiatives were merely parallel with or in addition to 'Islam'.

This leads me to a second preliminary point—'Islam'. All the various reform groups, whether 'modernist' or 'traditionalist', claimed an 'Islam'. This might suggest a reification which can only be ahistorical. Reification was and remains a persistent subtext in Indonesia. As Professor Shahrough Akhavi says[79] in a different, though related context, '. . . [there is] a dialectic between the purposes of scripturalists[80] and their utilisation of modern [i.e. Western] concepts to promote traditionalist objectives'. What then of interpretation in a non-scripturalist way—does this lead to secularism? Many would hold that it does: for example, the contemporary attacks on Professor Nurcholish Madjid in *Media Dakwah*[81] certainly argue towards this conclusion (see further below). It is enough for us to note here that in the early 20th century new types of education, which commenced from outside Qu'rānic discourse, makes reification a logical possibility. The reform agenda, in other words, is not determined from solely within a classic Islamic discourse.

Turning now to how we know Islam. If one holds that Qur'ān and Sunna have an a priori meaning, it is possible to reject rationalism. But how do we

understand a priori? Is the issue answerable, do we enter some sort of primitive literalism, or do we go into an infinite regression? The answer given by Nahdlatul Ulama (NU), the so-called 'traditionalist' group, is to rely on the classic texts of the Sunni *madhhab*, in fact primarily on the texts of only one, the Shāfiʿī. This is how we 'know' and how it avoids the disastrous alternatives. This position is not just an appeal to historical authority, although it can be read as such. Briefly, the argument is based on S IV:57 and 72, where *'ulil amri*' in the text is interpreted by '*ulāmā*' as 'inheritors of the Prophet'. It was expressed by a former chairman of NU, Mahfudz Siddiq, as follows:[82]

> The opinions as expressed in the writings of these *ulama* are products of their *idtjihad* as based on the Book of Allah; they do not make laws from their own reasoning so that it cannot be said that their opinions are not laws of the Book of Allah in the sense that they make laws of their own. For if this is the case, and people consider it so, the *ulama* have become a *murtad* [apostate].

In fact, however, a certain freedom for *ijtihād* has been shown to exist among the NU '*ulāmā*', but one must first be an *'alīm*.

If we turn now to Muhammadiyah, the oldest of the reform movements (founded 1912), we can see the development of a quite different agenda and one, moreover, towards which the Western-educated would naturally be more sympathetic. For its adherents, Islam and Revelation are of course a given, and moral obligation must be in accordance with God's will (insofar as this can be known). But this does not necessarily deny rational endeavour. Such is not to deny that faith is prior to reason but it is an affirmation that there is no *necessary* conflict between the two. That is, there exists a 'rightly guided' reason through which man can determine Natural Law(s) which is an emanation from Divine Will. One knows, in other words, by direct formal investigation of given conditions. These can be historical or causal, but are always demonstrable. The results of a formal scheme do not depend for their validity on *taqlīd*. On the other hand, the past (i.e. classical texts) is not without relevance. In Muhammidiyah thought one can read, consider and, if appropriate, select from the past. However, selections must be justifiable, which means that conditions in historical time and place must be ascertainable. If conditions cannot be specified, the whole enterprise fails for lack of a historical meaning.

The authority to say is in the argument, not in the status of the person proposing it. However, this implies the very serious risk of losing the appropriate religious commitment—that is, of elevating reason above faith. The result can be *bidʿa*, an unwarranted innovation though not to the point of actual disbelief. The Muhammadiyah solution was to found a *Majlis Tarjih* ('Council for Opinion', see chapter 1) as early as 1927, with the function of issuing *fatāwā* (or *keputusan*) where there were different opinions on matters of religion. There was something of a bureaucratic

practice respecting these rulings. From the *Majlis* questions went to a Central Board (*Tanfidz*) made up of '*ulamā*' who might agree or refer rulings back to the *Majlis* for further consideration. Its policy was set out in 1932 as follows:[83]

> We also call on all ulama to be willing to discuss the decisions of the Madjlis Tardjih, to point out its errors or the weaknesses of its arguments . . . the matter will again be reviewed [by the Madjlis Tardjih] . . . For a decision is only based on our knowledge and ability at the time it was made . . .
>
> The Madjlis Tardjih will not prohibit the study and discussion by the *madrasah* of the Muhammadiyah of problems on which no decision has been given by the Madjlis, or to examine the arguments of the Madjlis in arriving at a decision.

A third and related response from within Islam can be found in the intellectualism of *Persatuan Islam* (*Persis*), founded in 1923, which, like the NU and the Muhammadiyah, is still active. Also like them, it had a political face in the 1930s and, after the war, in the 1950s,[84] and its members were and still are politically engaged. Its main interest for us is in its *fatāwā,* which are considered in detail in the following chapters. For now, however, we need to spend a little time on *Persis* theology or, more accurately, its political philosophy,[85] and we can do this by looking at the careers of leading members of Persis.

Hj Moehamad Moenawar Chalil (1908–61)[86] is an appropriate initial example. He was a political activist, served on various state committees including the national Hadith Committee in the religious bureaucracy, and was Chairman of the Persis Majlis Ulama. He derived his political philosophy from the 19th-century Egyptian reformers and translated and wrote commentaries on ʿAbd al-Wahāb, ʿAbduh, al-Afghānī and Rashīd Riḍā among others. An illustration of this is a *fatwā* he gave in 1955 at the time of the first general elections in Indonesia. His proposition[87] was that a general election involving Muslim parties was, via *qiyās*, equivalent to *jihād*, and it was thus a duty for Muslims to support the Muslim interest financially, in this instance by a '*zakāt*'. This *fatwā* is in line with his earlier opinions which posit Islam as the foundation of the nation-state. However, 'Islam' in this context is not problematic, nor is it a contextual Islam. On the contrary, it is an 'authentic' Islam, by which he meant (a) that any proposition must be derived from Qur'ān and Sunna and (b) that formulations from these sources by earlier generations of scholars had to be rigorously tested. In effect, the latter test meant that in cases of less than full certainty any proposed action could not be justified and had to be forbidden. On this ground Chalil was prepared to dissent from the opinions of '*ulāmā*' of the past.[88] This did not, however, mean that Chalil was prepared to jettison the past. On the contrary, he looked to such authors as Ibn Qayyim al-Jawziyah, Ibn Rushd and Ibn Taymiyyah, as well as the modern

Egyptians who, in his view, provided examples of analytical thought suitable for the contemporary world. As with his colleague, Ahmad Hassan, the key to his position is to be found in the conviction that right analysis is possible and necessary. Chalil would accept no compromise either from historical texts or from contemporary opponents.

We come then to 'right analysis'. The Qur'ān and Sunna are absolutes, and contain within themselves the answers for the challenges of modernity. The answers can be identified literally. Literalism is linguistic and historical and directly defines law, ethics and political philosophy for all eras of Islam, including one's own. All Muslims, in particular the '*ulamā*', have a duty to show a will to action in identifying answers. The process of identification (analysis) will inevitably result in the dismissal of much existing *fiqh* authority. Local cultural practices, superstitions, accretions to Qur'ān and Sunna must also of course be done away with.

An example of this methodology can be found in Chalil's *Definisi*,[89] where his concern is to distinguish *dīn* from *agama*. Although both mean 'religion' in the general sense, the former (Arabic) has Islam as referent, while the latter is Indonesian in its context and referents. Thus, it cannot properly be used to refer to Islam. There is merit in this argument, particularly if we remember that *agama* can also mean 'tradition' in the non-religious sense. His discussion of *dīn* is based in its usage in the Qur'ān, and this leads him to its meaning in respect of the other Revealed religions. From the compound phrases *al-dīn al-haq* (religion of truth), he draws the literal conclusion that the proper reference is to Islam alone and not to the other two monotheisms. At best, *dīn* may be used in respect of these to the extent that their dogmas conform to Islam, but even this limited usage should be avoided. From this it follows that Islam must be the final and only true religion. This is supported by quotations from the Qur'ān itself[90]—that is, a validation from within. In short, the argument is circular but its conclusions have direct effect in the context of the nation-state. From his internal point of view it is obviously impossible for Chalil to accept anything less than Islam as the basis of the state. The *Definisi* also includes other examples in which the methodology is the same. A notable feature is his literalist criticism of preceding *tafsīr* (explanation/s). In this respect his methodology is absolutely consistent and the analysis, once the givens are accepted, is perfectly logical. There is obviously no room for *taqlīd*, indeed he sees the attraction of *taqlīd* as a weakness of humanity. In this we can see echoes of Al-Afghānī, for whom it was an explanation of the intervention of 'priests' as intermediaries between man and God. This is the ultimate danger of *taqlīd*, whether imposed from outside or by oneself.

This brings us finally to Revelation and reason. Chalil's position is that the latter is a function of the former, which is primary. Revelation imposes a duty to use reason, and the reason is the reason of the times. It is logically required in Islam; in Chalil's reference, as *ikhtyār*—here the 'will to action'. Indeed, he cites part of Qur'ān XIII:11: '. . . God will not change

the state of the people until they change their own state . . .'. In his view, this defines the nature and function of reason.[91]

This is a view internal to Islam, but it was not the only view in the NEI of the 1920s–40s. The secular nationalists had their own version of reason defining the state. The respective positions were (and remain) irreconcilable, and this can be illustrated in the celebrated debate between Moehamad Natsir of Persis and Soekarno (later the first President of independent Indonesia), which took place in 1939–40. This has been described in detail by Dr Deliar Noer[92] and, without repeating his analysis, some citations[93] from each side arranged as dialectic show the opposing reasonings. This arrangement is not a distortion of the historical record because each was aware of the other: Soekarno and Natsir were in fact arguing directly in 1939–40.

Soekarno

. . . how do you realise your ideals [about this unity] in a country in which you will uphold democracy and in which part of its population are non-Muslims, as in Turkey, India and Indonesia in which millions of people are Christians or embrace another religion, and in which the intellectuals in general do not entertain Islamic thoughts? . . .

If you become the government of the country in which many of its people are non-Muslims, do you want to decide by yourselves that the state be an Islamic state, the constitution be an Islamic state, the constitution be an Islamic constitution, all the laws be the laws of an Islamic sjari'ah? If the Christians and those professing other religions do not want to accept [your decision], what will you do? If the intellectual groups do not want to accept [your decisions], what will you do? Do you want to force them . . . to agree with your decisions? . . . do you want to play dictator, to force [them] with arms and cannons? If they will still not obey, what will you do? You do not want

Natsir

Islam does not tolerate nationalism founded on fanaticism . . . which breaks up the bond of brotherhood of all Muslims of various nationalities; [it also disapproves of] the pride of a nation if this constitutes the criterion for deciding what is right and what is wrong in order not to diminish the glorification of the nation; if the wrong is considered right even if this is in the interest and for the success of one's own nation. If all that comes from one's own group is defended and protected, although it is wrong: [Islam does not agree with the slogan] 'My country right or wrong'.

It is not wrong for a Muslim to make use of it [that is, the feeling of belonging to one group or nation] as a means for the concentration and strengthening of power . . . if care is thereby taken to respect the interests and rights of other groups, if fanaticism which buries rightness, justice and humanity is put aside, and if . . . the unity of the Muslim brotherhood is not lessened . . .

to eliminate them all do you?—for the present is a modern period and not a period of extinction of each other as was the practice of former days.

The Muslim community is not as happy and as carefree as the Christian people. The Christian groups are free to decide all questions relating to faith and to religion according to their own respective beliefs. However, the Muslim community is chained to the government policy. This constitutes a big obstacle for the growth of Islam in Turkey, and always constitutes a danger that religion becomes a tool for political purposes . . . If the government interferes in the holiest aspect of human rights, it will cause the most dangerous consequences. It would fetter the religious life of Turks.

When the Osmania dynasty had no Sultans with strong personalities, when the Osmania dynasty did not have figures with an iron hand like Salim I, Sulaiman I and Muhammed II, It appeared that the dualist system [of secular and religious administration] in the government always constituted a brake and an obstacle to every state action.

Caesarian-papistry can only strengthen and expand the country, when the emperor-pope of sultan-caliph is really a dictator . . . like Peter the Great, Salim I or Muhammed II, like Ibn Saud, like Nebukadnezar, who without much talk decided each for himself every state's measure. Such Caesarian-papistry is not unlike any other dictatorship, not unlike the dictatorship of Mussolini or Stalin, Jingiz

In short, the movement which has *kebangsaan* as its basis does not care whether the Indonesian Muslims whose number is about 85 per cent of the whole population, become apostates [and] change their religion into Christianity, theosophy or Buddhism.

Only leaders . . . who are pious, who give expression to this piety in deeds and [the carrying out of] duties (*amal ibadah*)—who obey and are loyal to the commandments of Allah and His Apostle, whose steps and measures are all guided by Allah's words and the Sunna of the Apostle, only those leaders can have the trust and deserve the obedience of the Muslims in the realisation of their ideals. Only a movement equipped with such a kind of a leadership is recognised by the Almighty Allah as Hizbullah, His army, which is guaranteed victory and success.

Allah's Revelation is not a guide for the drafting of the state budget . . . the arrangement of the quota system, the regulation of foreign exchange and similar other things. It does not stipulate traffic regulations [it does not] explain how to erect an antenna . . . how to arrange evacuation and air alarms . . . All this can certainly not and need not be arranged in Allah's Revelation which has an eternal value and is unchangeable. For all this is concerned with questions which are subject to change according to the demand of time and place . . .

Khan or Hitler. However, whenever the government system does not depend on a person [for its operation], [a person] who decides for himself everything, the dualism of state and religion implies a conflict within itself, it produces a system which always weakens, slows down, brakes, obstructs the capability and the dynamics of the state.

At present we need to rethink our interpretation of Islam to reinvestigate whether our ideas about Islam are all correct and whether there are none of our opinions which should be corrected . . . [we continue to abide by the established tradition] as if history has not shown proofs that there has always been a change in the interpretation of religion; as if history has not pointed out that sometimes old views are changed, corrected by new opinions, that wrong interpretations are corrected by right ones. As if history, for example, has not mentioned the correction in *talqin*, *usalli*, *taqlid*, *taulid*, *hidjab* (women's veil), (money) interest, women's position, the translation of the Qu'rān and one thousand and one other opinions.

What Islam regulates are those things which are not subject to change. Questions which are concerned with the principles for administering a society, and will not be changed as long as man remains man . . .

These extracts sum up the dilemmas for both sides and, when read with the preceding comments as to how one knows Islam, it indicates the main difficulty for Islam in the nation-state. There is no agreed definition of power, law and the legitimacy of authority. Instead there are multiple references and no agreed method of distinguishing that which is valid. Validity depends on assumptions which are not proven for each side. There is no common substratum acceptable to both. The variation of opinions *among* Muslim reformists tended also to add to the peripheral nature of Islamic thought from the Nationalist point of view. Soekarno's somewhat dismissive comments on *taqlīd*, the position of women and '. . . one thousand and one other opinions' is evidence of this, as his selective citation of historical events. In contrast, while Natsir cites the Qu'rān, his actual historical references are somewhat shaky.

This was the position up to the 1940s, and the issues raised remain the issues today. However, the past two decades have seen some quite remarkable developments in Islamic intellectualism, and it is to these that we now turn.

A new *madhhab* for Indonesia? Islam and society, 1945–1990s

This is a purposely provocative title. From what has gone before it will be apparent that Indonesian Islam has its own particular history and characteristics. These determine *fatāwā* which, as we shall see, are intensely local in both form and content. The issue for now is whether or not there is a theoretical underpinning for such a localisation to be generally demonstrable. Is there any intellectual initiative comparable, for example, to that of al-Fāsī, Turābī, ʿAshmāwī or Fazlur Rahman (above)? Without going so far as to say that there has been, four names do stand out.

The first is the legal philosopher, Hazairin (1905–75), whose work has been much underestimated—even passed over, relegated to footnotes. There has been little or no assessment of his work,[94] certainly nothing comprehensive.[95] Up to a point this is understandable. He wrote and taught in the 1950s–60s in a period of great turmoil in Indonesian politics, during which time Islam was much on the defensive. This is especially true for law. Further, his education was in the Dutch system, and though he was a professor in the University of Indonesia his training and approach to law were not in sympathy with the times. His 'rationalism' was seen to be tainted with what we now call 'Orientalism'.

His initial proposition was that the future of Indonesian law, at the very least in family law, lay in the creation of a *'madhhab nasional'* (national school). By *'madhhab'* he truly meant a school, and by *'nasional'* he truly meant Indonesian. His proposition actually rests on two givens: (a) that there is a distinction between *ʿibādāt* and *muʾāmalāt* which is sustainable, and (b) that the facts of human existence (facts of life, social structures and so on), while outlined in Revelation, are not wholly explained by Revelation. Given these, all that man can do is to begin from that which is directly known to him—that is, in this case, Indonesian social structures. Islam, in other words, was something to be moulded, used as a source for 'practical' Islam. This was the subtext of his work in the 1960s—a completely new *madhhab*. How was this to be achieved?

Hazairin's answer is in three parts. First, the Shāfiʿī *madhhab* is but a source for *muʾāmalāt.* The particular provisions of Shāfiʿī, as such, have no binding force for Indonesian Muslims. As a matter of principle, this is of course unacceptable to the '*ulamā*'. However, leaving that, what does this position imply from a strictly rational viewpoint? Can it be shown to be acceptable in such terms? For the answer to be yes, the proposal must demonstrate a logical consistency from *within* the source—that is, from within Islam. An outside validation is not sufficient. To this, Hazairin never

gave a convincing answer. His attempt consisted of inconsistent, not to say eccentric, interpretations of Qu'rān and *aḥādīth* which we can see to be historically and philosophically unsound.[96] Obviously dialogue with the '*ulamā*' was not possible: a mutually acceptable framework for discussion of the idea of choice just did not exist. On the other hand, Hazairin's proposition did open up the possibility of recourse to other schools of *fiqh*, to the idea of *talfīq* (opinions from different *madhhab*). The danger with *talfīq*, as the '*ulamā*' well recognised, is that it allows or even encourages recourse to the lowest common denominator of that which is socially or politically acceptable. It remains a subject of much debate in the Muslim world. That debate is concerned, rightly, with establishing canons of and for choice. 'Free' choice leads to trivialisation of *Syariah*, of 1400 years of jurisprudence, and this is in fact what happened with the *Kompilasi Hukum Islam* (see above). Although Hazairin had no part in the drafting of this document and there is no evidence that his views were considered, the *Kompilasi* is evidence of the current Indonesian recourse to the easy solution. Even Malaysia, where the Islamic debates are usually much less sophisticated, has not fallen into this trap. On the other hand, it is possible that he has not been totally without influence in this matter. Dr Fadhil Lubis has recently drawn attention[97] to the work of Dr Ash-Shiddieqy, which expresses similar ideas based on Arabic and Egyptian sources.[98] An assessment of their influence remains to be done, but Hazairin must have credit for at least first raising the issue in postwar Indonesia.

Second, he proposed that the *Syariah* be subject to Indonesia-specific facts of legal life. A large part of Hazairin's early legal training was in *adat* law and the concept of *adat* as the basis for a national legal system. His own special topic was inheritance, including unilineal inheritance systems, known especially in Minangkabau (matrilineal) and Batak (patrilineal) societies. It was in the area of inheritance, therefore, that he took a positive line for *Syariah* in national legal development. An extra factor was that bilateral (sometimes called 'parental') succession is far more common than the unilineal systems in Indonesia. It also has obvious positive implications for women's status and the position of the child.[99] It was here that the *Syariah* was a positive source. But, again, we come to the position of *Syariah* as source. A reformed adoption of *farā'id* was not possible in Hazairin's view because of Revelation. Bilateralism, by which he really meant female inheritance rights, was found in *Syariah*, but the inequalities in male as opposed to female shares had to be corrected. Again, his attempts to extract principles from Qu'rān and aḥādīth were not acceptable to the '*ulamā*'. How could they be? The *farā'id* rules are in fact set in Revelation. In essence, his argument from Indonesian facts to *Syariah* foundered because he saw *Syariah* as a source to be mined for a secular purpose and not as an absolute given.

This brings us to his third answer—that Indonesia required new *mujtahid*s who must have a national (i.e. Indonesian) perspective and must

act collectively in a systematic way. In other words, *ijtihād* must be organised on a nationwide basis. This was already partly the case, at the time he was writing, with the Muhammadiyah, NU and Persis. All claimed to act in this way and all continue the claim in their respective Fatwā Committees (see chapter 1). Since 1973 we have also the *Majlis Ulama Indonesia* at national and state level. In all these organisations there is now a collectivity of decision making for problems that impinge on *Syariah*. They all demonstrate a very local Indonesian perspective founded in consensus. Hazairin's achievement was to show the perils of approaching *Syariah* from the outside but also to emphasise the propriety of consensus long-term.

In passing I should indicate similar ideas put forward by Dr Munawir Sjadzali (Minister of Religion 1983–93),[100] whose 'Reaktualisasi' of *Syariah* is rather similar in that the given position is the fact of Indonesian social life. He bases himself, however, in the doctrine of *naskh* (abrogation) for the purposes of change. As one would expect, his views were and are controversial[101] but from the point of view of *Syariah* are much more soundly based in *fiqh* than those of Hazairin.

I turn next to the philosopher Harun Nasution (1919–98), who was active in the 1960s–90s. His education was primarily secular (in Cairo and at McGill University), though he did spend some time at Al-Azhar and at a private Islamic college in Cairo.[102] He was a follower of ʿAbduh and he disseminated ʿAbduh's views in a number of important works.[103] These gained considerable influence in the IAIN.[104] He was lecturer and later Rector of the IAIN Jakarta, where his main accomplishment was a reform of the curriculum along 'modernist' lines. His contribution to Islamic education was and remains notable. These two facts, his Western education and his sometimes aggressive reforms in Islamic education, very much coloured the reception his work has received in modern Indonesia and must be kept in mind when reading criticisms of his thought. As is to be expected, much of the latter has been politically inspired.

Nasution's fundamental position is that all religions, by which he means revealed religions,[105] have a commonality in that each recognises the idea of the sacred and all have the same function, which is to know and experience God insofar as that is possible for humankind. No religion, therefore, can be said to be prior to any other or, conversely, the completion of any other. This position is not at all acceptable to those learned in *fiqh*, who take the standard position that Islam is the completion of God's message to humankind. This view has been put most forcibly by H.M. Rasjidi, who attributes Nasution's position to 'Orientalist corruption' and maintains that such will lead to secularism and the evils thereof.[106] From the internal Muslim point of view the important conclusion for Nasution is that, historically, Islam is expressed in plural forms, and that this is a natural occurrence. In particular it is natural that social institutions vary from place to place and from time to time. None, therefore, can be more 'true' than another. Approaches to 'truth' are conditioned by time and place and rest on

reason, not on a simple acceptance of predestination. In other words, he is theologically optimistic. The key to his optimism lies in the fact of the rich heritage of *muʿtazilīte* thought within Islam. Orientalism, as such, is completely irrelevant. His reading of Islamic history allows for spiritualism, even asceticism, which can be another form of rationalism. He maintains that it is not necessary to face a choice between reason and, for example, Ṣūfīsm, as opposing ways of life.

It is notable that Nasution is not really all that concerned with the drafting of political or state institutional laws for Islam. His approach is actually via education, the function of which is to create an 'Islamic state of mind'. Although he is never very clear on the point, he seems to be looking to inculcate an Islamic ethic into those best fitted to rule. From this will flow a just and rational Muslim society. The (Islamic) rule by the best suited for the good of society. This was not the 'religious utilitarianism' (see above) of his day, and nor is it particularly acceptable today.

The validity of his position rests on his definition of reason. Here the context is important: it is Indonesia in the 1970s–90s, with a state ideology—Pancasila—and an authoritarian regime, coupled with quite startling economic growth directed by an all-powerful bureaucratic/military machine. If Islam can be reduced to an 'ethic' or a 'value' rather than being an institution of state, then it can obviously be subsumed into the state ideology. Unfortunately, Nasution's views do lend themselves to this use, and he himself was a strong supporter of the New Order regime.[107] He strongly disapproved of the previous (pre-1965) regime. This is the context within which Nasution developed his explanation of reason in Islam and, while not 'politically directed' as such, it was certainly accommodating to the late 20th-century Indonesian national state ideology.

For Nasution, reason is human action and, while God gave the capacity, man has determined it in many shapes and forms. Reason and capacity are not synonymous but they can be merged or founded in a common ground by an act of will. It is the *will to action* which determines or shapes that which is possible and right. Nasution pays lip service to *jabariya* (predestination) but he does come up against the apparent internal contradiction—that the will to action must be within the parameters of Islam. On the other hand, the *Muʿtazalī* accepts that one can know by reason, and for Nasution this is demonstrated[108] through the correct analysis of the Qur'ān and aḥādīth; *ʿaql* is the capacity to distinguish between oneself and 'the other'. Capacity has both intellectual and spiritual characteristics, which determine that which is possible and that which is right. In his view, neither of these is necessarily sociologically defined by Revelation.[109]

Nasution justifies the freedom of will to act by Qur'ānic reference,[110] but the will is not absolute. It is limited in two respects. First, that which is naturally impossible (e.g. to live forever) cannot be willed. Second, will is limited by the nature of things. For example, fire burns and one cannot will

it otherwise. Though his language is not very clear, Nasution appears to be referring to physical laws, including science, which govern the universe. So far as these are concerned, the will to action of both believer and unbeliever is equally conditioned by these laws. These limits on individual will ultimately derive from God's creation. But, subject to these limitations, one may freely exercise one's will to choose alternatives in one's social (in the widest sense to include politics) relationships.

A little earlier I indicated that the whole thrust of Nasution's thought made it relatively compatible with contemporary political ideology, and he himself was not only aware of this but became quite an active proponent of the then Pancasila ideology (see above). He saw it as the intellectual justification for the modernisation and development which was so successful in the Indonesia of the 1970s–90s. This success was in itself a demonstration of the superiority of reason over the level of development in the Old Order society dominated by a sterile socialism. A 'rational' Islam, therefore, was a natural element in a rational economy and ideology. Political representation as such for Islam was not necessary; it was sufficient that the elite had internalised the Islamic ethic. The Pancasila is in fact a 'manifestation of Islam in the context of the Indonesian State'.[111] This is a view according perfectly with government policy, which has always been opposed to institutionalised Islam. In other words, rationalism has a demonstrable social and political value which created a successful modernism for Indonesia. Islam's place, here, in Nasution's view, is that it is part of the wider national culture.

We turn now to the work of Nurcholish Madjid (1939–) for a separate but related view. Like Harun Nasution, this leading Muslim thinker has a background in Western Islamic study; unlike Nasution, he also has a strong *santri* background by birth and educational upbringing.[112] It is also worth remembering that, unlike the previous generation of writers, he grew up in an *independent* Indonesia and this, combined with the remarkable breadth of his education, gives a quite distinct cast to his thought. He is avowably apolitical, being more concerned with education,[113] but at the same time he is a political realist, as his discussion of Islam and political pluralities in Indonesia indicates.[114] The thrust of his thought is that Islam in Indonesia has developed Indonesian characteristics. These may be as simple and as obvious as linguistic adaptations and calendar systems, or as complex as various social adaptations and manifestations which are 'not Arabic'. For Muslims to accept pluralism requires 'a dialogue with temporal and spatial realities'.[115] The nature of man is one of these,[116] and it is required of Muslims, as of others, to accept and treat positively differences, '. . . supported by reasonable self confidence'. In other words, there must be an acceptance of changed circumstances, and 'classical Islam' itself exhibits these characteristics. Adaptation is not necessarily an attack on the authenticity of Revelation.[117]

Madjid first came to the serious attention of Indonesian Islam when in

January 1970, as chairman of the executive of HMI,[118] he presented a paper[119] on the renewal of Islamic thought and the 'integration of the Ummat'. In it he proposes approaching Islamic thought by distinguishing between that which is eternal and that which is temporal. The *umma* must be freed from the tendency to spiritualise the temporal because to do this is, in its own way, a deviation from the absolute transcendence (*tauhid*) of God. This view rests on showing that one can in fact distinguish between the eternal and the temporal. It implies further an acceptance of pluralism in the temporal affairs of Muslim societies: that is, that temporal values are culturally defined and subject to change. Unfortunately, as it turned out, he introduced the word *sekularisasi* into his discussion. In any discussion of Islam the term has generally negative connotations, and Indonesian Islam is no exception.

The paper aroused considerable controversy,[120] and between 1970 and 1972 Madjid published three more papers in which he clarified and elaborated his initial propositions. In the first of these, 'More on Secularisation',[121] he begins by way of an analogy between animism and Islam. For the former, inanimate objects have a religious meaning. On the other hand, for Islam the confession of faith imposes the view that only God is transcendent and only God must be worshipped. For the rest, the things of this world, they can be understood '. . . in accordance with what they are, whether in relation to their true nature or the laws governing them'.[122] This understanding is a function of man's (God-given) intelligence. Intelligence is primary to the nature of man,[123] and man's duty is to exercise it rightly. However, it is limited because it cannot fully comprehend God. The most that can be hoped for is rightly guided action or, more fundamentally, the will to rightly guided action. Intelligence is, thus, a trust from God to be exercised in worldly matters. Madjid cites and interprets several verses from the Qur'ān to this effect,[124] as well as providing an interpretation of the Confession of Faith—the use of Ar-Rahmān and Ar-Rahīm.[125] The point is that faith and knowledge are not the same and must be approached by different means. This is the crux of his whole argument, and we return to it in due course.

The third paper in the series is his 'Renewal of Thought in Islam,'[126] which focuses on the relation between the demands of social change and religiously derived value for the individual. What should be the nexus, and how is it to work? His answer is that Islam must free itself from such unfortunate tendencies as sectarianism but, most importantly, from any attempt at institutionalisation of belief. Religion is essentially an individual matter and must be understood by individuals in their own contexts and capabilities. Again, we have echoes of Nasution. The fourth paper[127] continues this theme—'Reinvigorating Religious Understanding'—with a call to get away from apologetics for religion. These were useful in their time, but a psychological confidence, positive in nature, is now required. The West can be approached in terms of equality. *Īmān* (faith) is more than static belief

combined with submission to God, and the individual does possess a spiritual stability which is the basis of his will to action. That action is naturally (i.e. by nature) to attain that which is good in God's eyes. The actions (*'amal*) which then occur will be in spiritual harmony with man's whole environment. The translation of man's spirituality into concrete social action is the function of reason, not the domain of faith.

Madjid has developed these views in a consistent way over the past 25 years.[128] However, the main sticking point for his critics remains the clear differentiation between 'spiritual' and 'temporal' Islam. His attempts to both differentiate and yet retain some sort of nexus is hotly disputed by such noted commentators as Muhammed Natsir, H.M. Rasjidi and Endang Saifuddin Anshari, who all, in their own ways, deny differentiation. Their arguments are both theological and historical,[129] and at bottom come to the issue of authority—who and on what criteria can rightly *judge* the world of temporal affairs? The question is as old as Judaism, Christianity and Islam, and it is for each generation to answer it in turn.

Religion in the nation-state or, for Islam, the 'Islamic State' is the modern manifestation of the authority issue. For Madjid the concept has to be rejected on two grounds. First, its proponents are merely apologetic and imitative in the face of Western ideological dominance (democracy, socialism) in contemporary national life. Islam does not in fact lend itself to ideologisation, because it is a true religion for which a state, as such, is not necessary. This is the distinction between religion and ideology: the latter is the justification for a state *and* is supported by it. Islam is neither, and strained interpretation of, for example, the 'Constitution' of Medina is neither relevant nor helpful for contemporary Indonesia.[130] I have perhaps put more here into Madjid's comments than he has, but what I have just said is the logical outcome of his position. The second reason for rejecting the Islamic state idea is that for Islam to be at all able to inform the institutions of state an undue degree of legalism would be required. 'Undue' here means undue for the circumstances of Indonesia.

On the other hand, as with Nasution, the arguments of Madjid do lend themselves quite happily to whatever ideology contemporary Indonesia happens to possess. The 'Islamic state' is really a state of mind. Pancasila, for example, can be accommodated in the same Islam and, in turn, it can accommodate Islam.[131] Indeed, some of his colleagues, for example Djohan Effendi,[132] have been quite positive in promoting a Pancasila–Islam nexus. But which Islam and which Pancasila?[133] In the present flux of Indonesian politics there is no firm answer.

Where does this leave us with Madjid? Has he, as Professor Hallaq asks (see above), given us a methodology? The answer, if there is one, will have to wait until we look briefly at the last of the modern '*ulamā*' in Indonesia. This is Adburrahman Wahid. Conventionally, this authority is usually described as a 'traditionalist' or 'conservative' Muslim thinker. Insofar as these adjectives have any meaning they may be taken to refer to the fact that

he is a leading figure in the Nadhlatul Ulama (NU), a movement which is largely Javanese and based in the *pesantren*. The terminology 'traditionalist' is unfortunate and misleading. As Abdurrahman Wahid himself says:[134]

> traditionalists are widely supposed to be backward in orientation and ossified in their understanding of Islamic society and thought. It is held that their persistence in holding orthodox Islamic law (that is, the Sunni *madhhab* or legal schools) leads them to reject modernity and a rational approach to life. Similarly, in matters of theology, their determined adherence to the scholasticism of al-Asy'ari and al-Maturidi is said to have resulted in a fatalistic understanding of submission to God's will and a disregard for the exercise of free will and independent thinking. Traditionalists are furthermore accused of being too other-worldly in their practice of ritual Islamic mysticism (*tasawuf*). Their activities within the *sufi* orders (*tarekat*) give the appearance of forsaking the present world in the hope of gaining eternal happiness in heaven. Thus, the commonly held view of traditionalists is that they are a wholly passive community unable to cope with the dynamic challenges of modernisation, the sort of community that scholars regard as belonging to a dying tradition.

There is much that is justified in this complaint. While it is true that in the decades preceding Independence and even for a considerable period after 1949 the NU could be described as defensive of Islam, this is no longer the case. As we shall see in the recent NU *fatāwā*, especially 1970s–90s, the charge of a lack of dynamism is clearly unjustified. There is instead a considerable creativity. Other commentators, for example Dr Greg Barton,[135] have noted the presence of an *ijtihād*, although the term is not usually used.

The NU incursion into active politics (1952–84) as part of a larger grouping was brief and unsatisfactory.[136] For the past decade or so, therefore, the efforts of NU members has gone into redefining itself and 'its' Islam. The process has been and remains uneven, comprising of real differences of opinion, personal self-seeking, government intervention and plain uncertainty. All of these factors have been discussed by competent authorities.[137]

For now the NU seems to have decided the main issue for itself. When asked what was the most important task facing the future Indonesia—what should be done—Abdurrahman Wahid said: 'Indonesians have to understand the meaning of the Rule of Law'.[138] In a general sense he meant efficient judicial administration and an open and transparent administration of justice. It is a European fallacy to suppose that the rule of law in this sense is a European invention. All the great legal cultures know the meaning of the term though they may express it differently, Islam included. Given his background (*pesantren*, Al-Azhar and Baghdad University), Wahid's frame of reference is in Islam although this does not mean that he is unfamiliar with Western scholarship: on the contrary, he has read widely.

To understand Wahid's position it might be useful to begin by noting that he is essentially a moral philosopher, rather than a strict practitioner of the philosophy of (Islamic) law. His interest is in the moral good of society within the parameters of Islam. While he shares a commitment to rationalism with Madjid and his colleagues, he tends to take the practice of rational thought as a natural given. It is the *use* to which this is put that is his main concern. This is an important distinction; to conflate the two is to impose confusion. There is no necessary causal link between the naturally given and the use to which such is put. There may be a commonality in 'rational' but it can beg the question of what is meant by 'rational'. This is by way of a caution.

A further point to be borne in mind, in Dr Barton's phrase, is Wahid's 'protective yet critical' impulse towards the *pesantren* culture from which he comes. One may call it protective, although this is to underestimate its fundamental importance in forming a whole view through which the world is refracted.[139] Like Nasution before him he sees the curriculum, the basic source of knowledge, as crucial for Islam in this time of transition. And so it is: all social, political or law reform starts with a curriculum, not with impractical legislation. Wahid's position is (a) that the *pesantren* system is valuable and needs preservation and (b) that, through its leadership, it must *demonstrate and deliver* a value to the social good. By the latter he means an ascertainable and qualitative contribution to the nation. To a Western reader this appears a vague prescription, but in the Indonesian context it places quite considerable demands on its proponent. The reason is obvious: as is well known, the Indonesian legal system is chaotic, and even not an operative system at all. Its institutional structures are weak and it is plagued by endemic corruption. The place and function of *Syariah* within such a system has been and remains debatable and the concessions to Islam, in the form of *fiqh*, are minimal to the point of trivial (see above). But ambiguity may not be unimportant in the contemporary Indonesian context.

Wahid's remedy, first suggested in a seminal paper, 'Making Islamic Law Conducive to Development',[140] now almost 25 years old, is to align the *Syariah* with the development of a national law. The theory of the past ages cannot be expected to provide solutions to the contemporary contexts of Indonesia. He comes very close to suggesting that the past *uṣūl al-fiqh*, as formulated by Shāfiʿī, is as such irrelevant, because too closely tied to the literalism of a bygone age. Instead the profound truths of religion must be accommodated within the social and personal necessities of the day. While the *fiqh* is known in text form, its idiom is historically of other times and places. This does not mean to say that one disregards 'rules' but that rules are not always unambiguous. Ambiguity is of course an important characteristic of *fiqh* in the contemporary nation-states, including Indonesia. The nature of ambiguity is to give options in social and political life, which may vary and even contradict one another over time or by changed circumstance. Wahid recognises this,at the same time as holding fast to the primacy of

Syariah at the most fundamental level. Similarly, one knows the *Syariah*, at its most formal, in the great texts of the past. What one does with this knowing is quite another matter.[141] In Wahid's case the political imperative appears to have led him towards an accommodation with the approved Pancasila ideology, which is founded in a quite different legitimising source, the (secular) state. This is an ambiguous position; the circumstances just described are abnormal for Islam in the sense that Revelation has become a subordinate condition. Ambiguity has given to Islam the character of extreme relativity. A withdrawal from active politics is a partial option and this has been taken by the NU, the organisation of which Wahid is head.[142] This has the advantage of forcing attention to the more fundamental issues, and the debate at the moment is concerned with establishing or perhaps re-establishing the fundamentals of NU thought.[143] Unfortunately this is less helpful for the philosophy of law: the main interest is in social philosophy. It is a legitimate program, but not sufficient in legal theory.

Such a comment requires justification, and now, by returning to Professor Hallaq's question— 'Where is the method?'—we may be able to give some answer. It is not to be found in speaking in terms of 'traditional Islam', 'responses to modernity', 'humanistic pluralism' or the like. Instead, can we identify general principles that embody the rationale behind a *fiqh* rule, and then use this creatively? The nature of Revelation means that argument must be by deduction to determine the validity of a prescription which is particular to a time and place. Only Nurcholish Madjid attempts to provide a method to do this and his reasoning, as I understand it, is as follows:

(i) Givens:
- *(a) The Qur'ān is absolute and inviolate. The Sunna of the Prophet is an exemplification of the absoluteness of Revelation.*
- *(b) Qur'ānic hermeneutics shows that Revelation consists of ideals and principles for man not regulating every last detail of life; hence the scholarly jurisprudence of the four Sunni schools.*
- *(c) The idiom of Revelation is in 7th-century Arabic language and culture.*

(ii) Method:
- *(d) Isolate those principles in the Qur'ān which relate directly to social justice prescriptions.*
- *(e) Specify the 7th-century cultural context of these prescriptions.*
- *(f) Specify our own cultural context(s) in which these prescriptions are to (purportedly) apply.*

The result will be a rational hermeneutic which will also be an internally consistent prescription (see below). It is not secularism. Nor does it demand that we ignore the traditional scholarship. That which is appropriate (e.g. Ibn Taymiyah) should be retained, at least as an example.

Before looking at this in a little more detail, there is one further point. This discussion is about creating the methodology of a legal system for Indonesian Islam in the early 21st century. I am restricting the discussion to this because the *fatāwā* state prescriptions and it is essential to know how they are defined and arrived at. This is not an exemplar of Western cultural distinction or an Orientalist reading of Islamic prescription. All legal systems[144] rest upon this basic endeavour (in this case, *uṣūl al-fiqh*), without which there is no system. The *Syariah* in Indonesia raises this issue in a very frank and brutal way. Does Indonesia actually have a legal system in the formal sense? The usual test is efficacy in time and place, though degrees can never be exactly specified. This is not a new question, but it became one of great importance in the 20th century. Indonesia certainly fails the efficacy test; laws are generally not known, are in a state of internal confusion, do not determine behaviour. In short, neither public nor private law commands a general obedience.[145] These comments may or may not apply fully to the religious courts; it is notable, however, that *fatāwā* from NU and Muhammadiyah clearly reject the authority of the courts. At best the *fatāwā* ignore the existence of the religious courts. In short, the efficacy test for the national legal system is not accepted by Muftī or Fatwā Committee: efficacy is 'in' Islam. We come back now to Madjid for one version.

1. The Qur'ān is not problematic; the Sunna is open to issue. The point is that Madjid is prepared to admit that Sunna has a normative value independent of Revelation. He does not define this in detail, nor is it necessary to consider it further here. The point is that in building his system Madjid is allowing rational hermeneutics into the discussion at a very early stage. His view is that the Sunna, as such, is not a necessarily binding source of law in all its (the Sunna's) aspects. 'Binding' here means binding for Indonesian circumstances. This certainly addresses the argument on efficacy of rulings (*aḥkām*), but whether the basis for this is to be found in *istiḥsān* or *istiṣlāḥ* is not clear—probably the latter. In either case, the position is sustainable within limits.

2. A further issue is the status of 1400 years of jurisprudence—*taqlīd*, *ijmāʿ* and *istiḥsān*. The issue in Indonesia is the same as in all parts of the Muslim world. Perhaps the most striking example is in *takhayyur* (blending from different schools/doctrines), a quasi-*ijtihād*. The Compilation of Islamic Law (above) is an example, and not a happy one.

3. The Qur'ānic idiom is, in Madjid's view, self-evident. The importance of this given, however, really lies in the fact that it is stated at all. It is a reminder that, for him, true reform must start with the basic text.

4. Prescription and ethics can be separately identified. This is a defensible position but one not without problems for laws based in Revelation. The

various views on Natural Law, which one finds in the standard textbooks,[146] illustrate the dilemmas. Briefly, while Divine Wisdom directs man, Revelation by definition is not fully intelligible. However, as a reasonable being, man has the ability to distinguish between good and evil, and the rules on these we call Natural Law. Human prescription derives from this but it *must be read with* those parts of Revelation which themselves contain prescriptions. Obvious examples in Syariah include those passages dealing with family and inheritance. The man-made positive law must not contradict these prescriptions. Madjid himself refers to 'social justice', a pure Natural Law concept.[147] It is the 'limits of human authority'[148] which are the issue here.

5. Assuming the identification of prescription, however defined, we can only properly understand them in the context of 7th-century Arabia, which is their idiom. We have to understand that idiom 1400 years later. There is a huge assumption here: that history is truly objective and that a meaning in a particular context can be properly identified. It assumes, indeed, that the historian is a purely rational being without bias. But in the present instance for Madjid this is rather less than probable, because his enquiry has a purpose which is not objectivity as such but meaning for 'social justice'. The purpose, therefore, directs if not sets the criteria for 'objectivity'. One has to make a choice in such circumstances. Either one gives up because of the logical difficulties or one persists on the grounds that some conclusion, even if flawed in a Cartesian sense, is better than none at all. History, after all, is not science, and we are bound to do the best we can with whatever evidence of the earlier time remains to us. Underlying everything is the fact that we are not dealing with a fixed corpus of material. New evidence gives rise to new explanations, in this case the formulation of prescriptions in a religious law. The 1400 years of *fiqh* may be significantly modified but Shāfiʿī early recognised the danger of this in his objections to *istiḥsān*.

6. Allowing that we can get some universally agreed position, the specification of the contemporary Indonesian cultural context bristles with difficulties. Essentially, what is 'context'? Is it properly in philosophy, sociology of Islam, its political manifestation, or efficacy in a national legal system? Are these mutually exclusive or linked, and in any case is one or all to be linked to the 7th century? Indeed, can such a link be considered appropriate?

These are the issues which, in various forms, are debated today in Indonesia. It is a rich and complex debate and one is reminded of the account Professor Hallaq gives[149] of the thought of Fazlur Rahman (decd 1988), with whom Professor Madjid has much in common. One can agree that we now have the beginnings of a methodological system. However, the real Indonesian problem lies in whether or not Indonesia actually has a legal

system, properly so called. It is doubtful, and the methodology proposed by Madjid may in fact be stillborn. However, in the following chapters, when we look at the reasoning in contemporary *fatāwā*, we can possibly be a little optimistic.

CONCLUDING REMARKS: SCHOLASTICISM AND CONTEXT

This introduction has attempted to describe 'contexts'. But one might actually make a case to show that the contexts described are in fact much more than that. They really amount to a variety of definitions of Islam. Each definition is 'Islam' in its own way, but, having said that, none is totally separate from any other or others. The key to understanding the variety of definition—indigenous, colonial, post-Independence—lies in the scholasticism of the 20th century. While the Egyptian reformers certainly set the agenda for this 100 years ago, the Indonesian use of that agenda can be understood only through Indonesian scholastic effort.

The scholasticism of the past century, like the scholasticism of the preceding history of Islam, is concerned to explain or translate the *Syariah* into the world while maintaining the integrity of Revelation. In this sense it is not new. However, in 21st-century Indonesia we must now distinguish between a *responsive* scholasticism and a *creative* scholasticism. The first is found in the colonial period and is characterised by a defensiveness in law and dogma. Such an attitude is perfectly understandable. For the first time in Indonesian history the conditions within which Islam had to exist were not susceptible to answers from within. Indeed, even the texts were open to questions as to their validity in the 19th century. Answers from within Islam were not sufficient in the new conditions. The solution was to advocate changing the conditions—to look for an Islamic polity, to encourage or force the individual to become a good (better) Muslim. In other words, to change the contexts within which Islam found itself. The assumption was that Islam itself did not need and was not subject to the same demand. It was already perfected. This was the view associated with the NU and Persis, and even the Muhammadiyah had to admit that perfection is a given. The responsive scholasticism went into defending and demonstrating the perfectness of Islam in the face of the obvious fact of its subject status in colonial NEI.

We have to wait until well into the post-Independence period—say, from the late 1960s—to find clear indications of a creative scholasticism. By this I mean one which is self-confident enough to propose serious change, alteration, adaptation of classic scholasticism. Whatever the actual language used (Hazairin, Sjadzali, Nasution, Madjid, Wahid), the common intention is to explain the truths of Islam from within in a way that is positive and useful for the Indonesian *ummat*. The emphasis is on the creativity inherent in Islam, the true flowering of which can be achieved through rational thought which is itself God-given. Creativity is a duty but, as is recognised, it also has its dangers, two of which are as follows:

1. Islam as object. Creativity means selection and choice. For Indonesian Islam, as for Islam elsewhere, this raises yet again the *Muʿtazilīte–Ashʿarīte* positions. As we shall see in the chapters that follow, the issues are recognised. While it is premature to say that there is a common Indonesian position, it is certainly true that all streams of Muslim thought accept creativity as a possibility. However, each has a separate emphasis on reification. The spectrum is wide from the little-known, 'progressive' fringe groups on the one hand, through the Muhammadiyah contextualisation, to Persis scripturalism, to NU *taqlīd*. But these are misleading classes, each varying in time and place and in particular subjects. However, none denies creativity, and all run the risk of turning religion into an object—a 'thing outside'.

2. Islamic studies. By what criteria does one approach the 'thing outside'? For the responsive '*ulamā*' the answer was found internal to Islam but it was not sufficient. For the creative thinkers one has *ijtihād,* but what sort of *ijtihād* is it? We can find an answer when we look at the books cited in the post-Independence studies. Western philosophy and social sciences are well represented. It is hard to escape the conclusion that an internalised Orientalism is often present in Indonesian Islam. The degree of this presence must always be open to debate. Whether it is right or wrong in terms of some criteria is another matter. The answer is always going to be personal and ideological.

The *fatāwā* in the following chapters take us into these issues in a way which is immediate, and which is in a known classical form with its own rules and jurisprudence. It is in the *fatāwā* that we locate context and definitions for contemporary Indonesian Islam.

1

Knowing Islam: method, doctrine and representation

It is often assumed by Muslim and non-Muslim alike that 'Islam' is some sort of monolith, but even a momentary reflection is sufficient to show that this is not true. On the contrary, intellectual and social variation and variability is the norm and has always been the norm throughout Islamic history. Why then the all too common assumptions of a seamless religion? For many outside Islam the answer almost certainly lies in ignorance of the facts of dogma and of Muslim life. Variability is not even contemplated. For Muslims, on the other hand, the postwar attempts at creating a universal Islam, a unity of the *umma*, is an ideal of such potency and attraction that variation tends to be overlooked.

The *fatāwā* in this chapter show us three ways in which we can know Islam in Indonesia. The first is various methods of reasoning—that is, how the *fatwā*-issuing authorities arrive at a result. I have called this method; it is prior, because through it we know an internal logic. Second, we know Islam through written doctrine. The *fatāwā* demonstrate how problematic the boundaries can be between 'Islam' and 'not Islam'. While the individual's duty (to God) is in theory certain (see also chapter 2), in practice it is quite another matter. Purity of doctrine, of knowledge, is debatable and in the examples given below often involves the national politics of religion. Third, the representation of Islam is crucial to how one sees and thus knows and understands religion. The prohibition on image and image-making is the most doctrinally sensitive instance of representation.

These three aspects of knowing are extensively discussed in the *fatāwā*. When taken together they give us a preliminary answer to how we know Islam in Indonesia. They are not a whole answer, and each of the following chapters plays out its own variation on the same theme. However, they are a necessary and, I hope, sufficient introduction to the perceived universality of Islam vis-à-vis its localisation in Indonesia. It is the local position which is the key to understanding.

THE *FATĀWĀ* AS METHOD

There are four[150] main *fatwā*-issuing bodies: Persatuan Islam (Persis), Nahdlatul Ulama (NU), Muhammadiyah, and Majlis Ulama Indonesia (MUI). The first three date from the 1920s and their respective ideologies have already been outlined (Introduction). The MUI dates from 1973.

Persatuan Islam (Persis)

The Persis *fatāwā* are largely, though not entirely, the work of one man, Ahmad Hassan (1887–1958). While his theology is in line with that of his colleagues described earlier, he is something of a special case in Indonesian Islam. His work is often described as 'aggressive', 'puritanical' and 'extreme'.[151] It is true that he rejects compromise and negotiation, and that he uses the words 'stupid' and 'liar' to describe his opponents. We should not make too much of this characteristic, however, because in his *fatāwā* he presents us with an example of pure 'literalism'. By 'literalism' I mean nothing more than his reading method, which consists of Qur'ān (basic source), language and *aḥādīth*. All are primary in the Persis view; they are of course related: grammar and etymology are the foundations, while *aḥādīth* are one step up as oral and then written narratives.

The language element consists of short and accurate summaries of the method of classifying words in degrees of clarity. These include: *zharir* (*ẓāhir*)—that which is manifest, though glossed, indicating that one meaning can be more common than another; *mujmal*—a word which is unclear, and the text is not helpful; *aam* (*ʿāmm*)—that which is general of a class; *muthlaq* (*muṭlaq*)—a generic noun, in Persis usage meaning one or a few within a class; *musytarak* (*mushtarak*)—the homonym.

Despite the fact that the introduction claims that the 'smallest imprecision may . . . change the meaning and create an injunction which has no foundation in Islam', a number of important classifiers are not mentioned. These include *mufassar* and *nuḥkam* and *khafī*. On the other hand, it is only fair to say that there is little controversy possible with these terms, and they do in fact appear in various *fatāwā* with standard meanings.[152] In other words, the linguistic section is really on areas in which disputation is likely, but the section is by no means complete. It is a guide rather than anything, but it cannot be read alone. The following section on *ḥadīth* both assumes and explains the language references.

In the Persis treatment of *aḥādīth,* the emphasis shifts from language as such to linguistic narrative for a purpose. Language is thus a given in the science of *aḥādīth*. There is nothing particularly original in these comments, but the idea of narrative needs to be stressed because it forms the most basic part of Persis *fatwā* method. This can best be explained by taking a selection from the Persis *fatāwā* which deal specifically with the *ḥadīth* genre. (The number references are to the latest *Soal-Jawab* edition—see Appendix.) All told, there are nine[153] *fatāwā* specifically on true/false

aḥādīth; we take a small selection only, although it should be borne in mind that the issue is always part of *fatāwā* on other subjects. As we shall see now, the actual discussion can be quite complex.

No. 522 (a *ḥadīth* which contradicts the Qur'ān)

> Q—There is a verse from the Qur'an which says that if a man is dying and he has an estate, he must make a will. However, there is *a hadith* which says that there is no such thing as a will for a man with heirs. Don't these two contradict?
> A—The verse from the Qur'an (Al-Baqarah 180) and the *hadith* certainly do appear to contradict. The *hadith* has been passed down by Turmudzi, Ibnu Majah and Daraquthni and has the status 'Hasan'.
>
> According to rightful thinking and several authorities, it is impossible that the words of the Prophet, Allah's delegate, could ever be in contradiction with the word of Allah. Therefore, we do not believe this is the word of the Prophet even though it has been given the status Hasan or valid. (At least that would be the case if we took it at face value—in fact the *hadith* can be reconciled (dita'wil).)
>
> There are some ulama who say that the *hadith* has revoked the verse. Apart from lowering the status of the Qur'an, this view can not be accepted. There is nothing in the Qur'an which has been or can be revoked.

No. 525 (false *ḥadīth*). Here there are 36 supposed *aḥādīth,* each of which is considered by Ahmad Hassan. The opening and closing paragraphs are sufficient for our purposes.

> There are more than a few Muslims who read in a book, the validity of which is not discussed, and just assume it is valid when in fact it is weak or false. Many writers quote *hadith* without bothering to check if it is valid because they are lazy or because it is convenient for their argument not to check. This has slowly corrupted our religion. Here, I would like to take the chance to discuss some false *hadith* which have been accepted by many Muslims . . .
>
> There are 36 false *hadith* listed in all. Each is discredited because of a named person in the chain of authority, generally someone who is a liar or who is unknown. Usually the name of at least one person who has discredited them is included as well as what they have said. Most of the *hadith* are quite unusual. For example there is one which claims that Allah has a big rooster and that when the bird hears a voice in the night it cries Maha Suci, Maha Bersih. Another reports that if there is lightning at the beginning of the year that is a sign that it will be a fertile year. If it is at the end of the year that is a sign that people will be safe from floods. One *hadith* says that the Uhud mountains is one of the pillars of heaven. Another tells how Allah made the date palm with the soil left over from making Adam. Another reports that spiders are Satan and that we must kill them.
>
> A number of the *ḥādīth* talk about the blessings and protection which comes with being named after a Prophet and the special treatment such people should receive. It is pointed out that there is no shortage of people named Muhammad who are adulterers, drunkards, thieves and the like.

The remaining *hadith* deal with holy matters. One claims that there are only two types of water which can't be used for mandi janabat—sea water or hot water. This *hadith* and others like it have weak links in their chain. They also contradict a valid *hadith* which says that sea water is holy and halal. Another *hadith* says that people who shake hands with a Christian or Jew must wudlu and wash their hands. Most of the false *hadith* are related to matters of wudlu. They are invalid for all the same reasons—a weak link in the chain or someone unknown or they don't name the Companion of the Prophet who observed the practice or made the statement'

No. 527 (questions about several *aḥādīth*—there are 22). We have space only for six which, between them, give a snapshot of Persis intellectualism; they include ritual, authority, 'mysticism', and the state/mother country.

Q—In the book, Iqaadhul-manaam, page 93 written by Al-Hajji Muhammad Yasin bin al-Hajji Abdul Ghani from Batu sangkar [sic], Minangkabau there are two *hadith* which give instructions about ushalli and which support the view that reading ushalli is sunnah. It is said that both *hadith* were passed down by Bukhari and Muslim. What is their status?
A—Both of the *hadith* are false and probably written by the author himself or borrowed from Haji Usman Perak. All Muslims must demand to know where authorities come from and ask to be shown where they appear in the book of Bukhari or Muslim.

It seems that people who falsify *hadith* don't only exist in the past. What is the reason? Quite simply because they want to win and they want spoils from that success. Their aim in teaching Islam is to get women and money. They still dare to manufacture *hadith* in an era when almost everyone has access to the books of Bukhari and Muslim in their own countries. They are liars without faith who attempt to corrupt others. We normally wouldn't speak so strongly about those who differ in opinion from us but it is necessary in order to draw the community's attention to their actions.
Q—What does the following *hadith* mean: There will be no unity amongst the community of my followers towards errors?
A—There are many *hadith* like this one—some of which are valid and others which are not. The *hadith* means that although some groups will make and follow errors, others will remain on the right path. This means that at any one time in history although some parts of the faithful might follow the wrong path, the entire Muslim community will never be wrong. The Ushul ulama might say that the *hadith* supports the view that it is compulsory to follow ijma'a [sic]. It doesn't stand for this. It does not give a compulsory order to follow the law as agreed on by the Muslim community.
Q—Is the following *hadith* valid—I am from Allah and the word is from me. I am the source for all the world. Adam is the father of the body and I am the father of the spirits. I am a treasure which is hidden. I was light before Allah for two thousand years before he made Adam?
A—We have been unable to find this *hadith* in any of the famous books. Therefore we cannot say that it is from the Prophet or that it is valid. We hope that more information will be provided about what book it came from and who passed it down so that we may check it.

> Q—Is the following *hadith* true—Love for your nation is a part of faith?
> A—This is just the words of someone who loves their country. Love for one's nation which translates into efforts to put Islamic law into operation as widely as possible is indeed commanded. Love for one's nation which has a different meaning is forbidden, even condemned.
> Q—What is the story with the following sentence—Die!, Before you die?
> A—This is not *hadith* it is the words of a mystic. It means before you die you must kill off all those characteristics in yourself which are not good. That meaning is positive so long as it is not taken too far until the person is devoid of feeling and desire, despises the world, wears dirty clothes and so on.

The tone throughout is ultra-rational but based in Revelation. Thus, in No. 522, '. . . we do not believe it [the supposed *ḥadīth*] is the word of the Prophet . . . even though it . . . has been given the status of valid . . .'. But it was not taken '. . . at face value . . . [and in any case it] can be reconciled'. 'There is nothing in the Qur'ān which has been or can be revoked.'

In No. 525, all *aḥādīth* must be checked; it is not sufficient to accept whatever is written: to do so is to corrupt religion. The main method of validation is to investigate the names in the transmission, and this is usually decisive. There is nothing especially original in this but a further factor is the constant suspicion by Persis of the purported *fatāwā* which deal with unusual usages—superstitions. By their nature, these are immediately open to query.

In No. 527 we have references to local (in this case Minangkabau) comment on *aḥādīth*. These are declared false or borrowed from another local writer. They are described as falsifiers and liars out for their own gain ('women and money'). The reference here is to the intra-Muslim communal strife of the late 19th century, where political differences were put in theological terms. At the same time, the Persis view remains consistent—to examine carefully (and linguistically) the truth or otherwise of a purported *ḥadīth*: 'We have been unable to find this *ḥādīth* in any of the famous books . . . even when almost everyone has access to [these] books'. As for the proposition that loving one's nation is a duty on Muslims, it is acceptable only if Islamic law is to be the law of the state. Otherwise it is forbidden. Mysticism, as such, is permitted up to a point; if an individual 'despises the world, and wears dirty clothes' it is forbidden.

These comments are sufficient to show that the Islam of Persis is, for practical purposes, an examination of texts. This brings us to the fundamental issue of *ijmāʿ*: consensus. Persis by no means rejects *ijmāʿ*, and in the very important *fatwā* No. 572 (1933) the matter is discussed in detail:'it is a complicated matter so we shall deal with it in stages'. These stages consist in ascertaining: (a) its linguistic meaning, which is defined as 'united to reach the same conclusion', and the Persis usage is standard in the law textbook; (b) its technical meaning in *fiqh*; here the *fatwā* cites a number of texts which differ among themselves as to precision of source. This is well known, particularly with reference to *arkān* (the essential

requirements).[154] It is here that the Persis critical approach becomes apparent. Sources are objected to—what is meant by the 'Muslim community', is it in the past, the present or the future, does it include all, the wise and the stupid; who are the *'ulāmā*' and how do we know who they are; what is the authority for deciding whether an issue is religious or not, and are these fixed categories? These are classical questions, and the Persis answer is that one must look to Qur'ān and *aḥādīth*; (c) essentially, the Muslim must ask how one 'knows'; what is the epistemology that can be the foundation for *ijmāʿ*?

There is no answer in a recourse to history; for example in this *fatwā*:

> Can we imagine that in any era all the ulama, mujtahidin or others were of one opinion on a matter of law not dealt with by the Qur'an or *hādīth*? Is it possible that they met in one place and agreement was reached amongst all the ulama in the world on one point? Or can we imagine that a few ulama reached agreement first among each other and then on that basis got the agreement of all the other ulama in the world?

As for *ijmāʿ*, the Persis question is: Is there an *ijmāʿ* on *ijmāʿ*? The *fatwā* denies this, and offers a set of rebuttals to the usual justifications. Shortly, *ijmāʿ* is of man and can never 'form a part of the laws of God . . . Allah did not command us to follow *ijmāʿ* which was made by a crowd of "*ulāmā*"'. We leave the last words with Ahmad Hassan in this *fatwā*:

> We said that the best linguistic definition for our purposes was 'unity of opinion on a matter'. We discussed the technical meaning given to ijma'a in the context of Islamic law and found that all the definitions provided were inadequate in some way. Then we considered whether it was actually possible to have ijma'a. After which we considered how we could know that there had been ijma'a. Finally we considered authorities from the Qur'an and *ḥādīth* in support of the proposition that it is compulsory to follow ijma'a. We found no proof in support of that proposition . . .
>
> It is clear that man does not have the power to make laws in the name of Allah, the Prophet himself only pronounced laws following a Revelation from Allah. Man can make laws on worldly matters and if necessary they may be changed by those who made them or by others.
>
> Therefore it is clear that there is no *ijma'a* which we must follow except *ijma'a* which comes from the Companions of the Prophet. *Accepting ijma'a from the Companions of the Prophet does not mean that we have to accept their decisions or determinations on matters of religion* [emphasis added]. It is just that we believe that the companions of the Prophet would not be brave enough to lay down something or be of one mind in a matter in the name of Islam, if they did not hear or receive an explanation from the Prophet, which they did not then explain to us.
>
> If there is some division amongst the Companions of the Prophet then we do not use their opinions except to the extent they are supported by the Qur'an or *hadith*. So what is meant by ijma'a in this context, is some religious deed or

belief which is referred to by several of the famous Companions, that is not accompanied by some authoritative explanation but which does not contradict the Qur'an or *hadith* and with which no other Companions of the Prophet have disagreed.

Muhammadiyah

This organisation was founded in 1912 with a women's section—'Aisyiyah' (various spellings)—established in 1918. It began issuing *fatāwā* in 1927. Like Persis, the Muhammadiyah finds its Islam in *ijtihād* but it understands the concept in quite a different way. The '*metod ijtihād*'[155] is thus crucial, and its source for Muhammadiyah is the *Majlis Tarjih* (Council for Opinions).

The basic contemporary text is *Buku Panduan Muktamar Tarjih Muhammadiyah XXII* of 1989 ('Guide of the Majlis Tarjih Conference'). It repeats the founding aims of Muhammadiyah, which are reformation (*tajdīd*) of Islam, Muslim society and the *Syariah*. The major method in each is to employ reason, but in accordance with the teachings of Islam. The importance of education is obvious and, as a social-political movement the Muhammadiyah is especially prominent in the field of education and has been since the 1920s. In short, the Muhammadiyah has consistently promoted a method for understanding Revelation.

The foundation of the Muhammadiyah ideology: (a) lies in the idea of *maqāṣid al-sharīʿa*—that is, that law has a purpose, an objective which must be identified and implemented; (b) the purpose is *maṣlaḥa*, public interest/benefit, widely defined. In short, we have an ideology which supposes something like the 'greatest good'. However, unlike secular ideologies, the Muhammadiyah are constrained by Revealed sources—Qur'ān and Sunna—and by the limitations in human reason which Revelation imposes. These are serious limitations, added to by the premise accompanying Revelation, which is that one *must* work within the constraints of Revelation. It follows, therefore, that the exercise of reason, *ijtihād*, is limited (a) by source and (b) to techniques of analysis already known in the *fiqh* literature. To arrive at *fatwā*, therefore, the Muhammadiyah has the following scheme, which attempts to reconcile these various elements.

(a) The primary sources are Qu'rān and Sunna. Where a *maṣlaḥa* can be clearly identified here[156] it should be used as the principle for law. Obvious examples are the known *naṣṣ* (clear injunctions).

(b) Where a *maṣlaḥa* cannot be clearly identified in the primary sources, a number of methods can be used to find a benefit but in no case can derogation from the primary sources be allowed. The function of *ijtihād* is to solve the difficulty; the Muhammadiyah definitions now follow.

(c) *Qiyās*, to deduce by analogy—that is, to extend the principle in an original (*aṣl*) case to a new case because the effective cause (*ʿilla*) is the same. It applies only to new circumstances and cannot be used to overturn an existing ruling. There are two problems with *qiyās*. The first is extending

analogy from one case to another case and so on in infinite regression. The classical jurists were well aware of this and introduced the rule that a result by analogy, once achieved, cannot be extended. The second and hitherto unsolvable problem is how one identifies *ʿilla*. Is it a cause or merely a signifier? And what, precisely, are the conditions for identification? It cannot be a mere likeness (for example, if wine and whisky, why not an extreme patriotism, which is also a form of intoxification?). One is on quite difficult ground, and even the possibility of definition remains controversial.[157] We can see the argument for identifying an *ʿilla* to achieve a benefit, but the benefit may not be the same as the objective (*ḥikmah*) of the original rule. If this is allowed, we are coming close to rewriting *naṣṣ;* we are in fact leaving *qiyās* for *istiḥsān.*

(d) *Istiḥsān*, juristic preference for the 'good'. This is the next step for the Muhammadiyah *fatwā* method. *Istiḥsān* is perhaps the nearest to something like 'rational natural law': that is, the right principle can be found by reason. In the Muhammadiyah the source still remains in the Qur'ān and Sunna—Taking *maṣlaḥa* as the basis, the Muhammadiyah tend to look to the established objectives of Qur'ān and Sunnah—that is, *ḍarūriyyāt* (protection of necessities), *ḥajiyyāt* (requirements) and *taḥsīniyyāt* (embellishment). These are criteria decreasing in value.

(e) *Istiḥlāh*, public interest. This is also known as *al-maṣlaḥa mursalah* and is associated particularly with the Mālikī *madhhab*. It is confined to matters outside dogma and ritual and is not mentioned in Revelation. Public interest includes benefits and also the prevention of harm. Both must be in harmony with objectives (*maqāṣid*) of the *Syariah*. Classically speaking it is in fact quite restricted in *fatwā*, but its use in the Muhammadiyah *fatāwā* is extensive (see example below on organ donation).

(f) *Sadd al-Dharā'iʿ*, 'blocking the means [to wrong acts]'. The principle is to prevent an evil (*mafsadah*) before it occurs by classifying actions as (i) those which will definitely lead to evil, (ii) likely to lead to evil, (iii) frequently but not inevitably leading to evil, and (iv) those acts which possibly but rarely lead to evil. One can easily see the problems in definitions of actions which must, by the nature of things, be highly circumstance-specific. The principle has one further aspect: it also covers the case where that which is forbidden (*ḥarām*) may be turned into that which is permissible (*mubāḥ*) so as to prevent a greater evil. The lesser is tolerated. This use of the principle is common now in Indonesian *fatāwā* in the field of medical ethics, for example permitting transplants (see chapter 4). *Maṣlaḥa* is always the context.

The idea of context is the crucial element in the Muhammadiyah ideology of religion. It gives a workable scheme within which one can attempt to distinguish the sacred and the worldly. This is not without its difficulties (see above on Harun Nasution and Nurcholish Madjid) but an exact use of classical terminology defined for contemporary Indonesian circumstances may be not wholly unachievable. The fact that contradiction

is going to occur is acknowledged. This essentially means that the terminology is itself contextualised and that change or the possibility of change in circumstance is a constant.

The implications for the method of *ijtihād* is an acceptance of pluralism—'a dialogue of temporal or spatial realities'[158]—which is the acceptance of a rational hermeneutic. The Qur'ān is not problematic but the implications of Qur'ānic prescription in contemporary Indonesia can be, specifically in the context of *maṣlaḥa*. Choices must be made (see above) and in the Muhammadiyah *keputusan* (decisions) and *jawab* (answers to interrogatories) principles are stated and Qur'ānic citations are given in support. However, it is open to the individual to make an informed (i.e. from the citations) choice of how the principle might apply in practice. The onus of choice rests on the individual.

In a real sense, therefore, the Muhammadiyah *jawab* and *keputusan* are a guide to sources; this is its basic definition of *fatwā*. The Muhammadiyah *fatwā* is a curriculum or program, it is didactic rather than prescriptive, in contrast to Persis which is wholly the latter. This is not to say that choice or selection is unrestrained: they must be exercised within defined givens (Qur'ān, classical methods of reasoning). However, selection is possible through individual (and collective) *ijtihād* and *ittiba* (*itʿibār*), which lie in the space between Revelation and prescription in society. Thus, while a Qur'ānic source cited in a Muhammadiyah *jawab* is binding, the Muhammadiyah does not recognise, as such, the binding force of its own *fatāwā.*

As we shall see in later chapters the idea of choice, even within limits, can give rise to inconsistency. For example, the simultaneous use of *qiyās, istiṣlāh* and *istiṣhāb* has involved the Majlis Tarjih in *talfiq*, where there is an acceptance and rejection of principles from Ḥanbalī, Shāfiʿī, and Hanafī in the same *fatwā.* The criteria for choice are not really specified. This is especially apparent in the choice of *aḥadīth*, which is almost never explained; why is a particular *ḥadīth* a *ḥadīth mutawātir*? Perhaps the answer lies in an overinsistence on denying *taqlīd* but at the same time referring to the texts, though again in an unclear way. These comments raise the very serious problem of capacity of the Muhammadiyah '*ulāmā'* to achieve a standard appropriate to issue *fatāwā*. This issue is pursued in the following chapters.

Nahdlatul Ulama (NU)

The NU, founded in 1926, has a long history of *fatāwā*. The current edition has over 400 recorded *keputusan/fatāwā* dating from 1926 to the 1990s (see Appendix for details of sources). These are issued for the members of the NU and, in theory at least, are binding. Contents are arranged chronologically, not in subject order, although in some years particular topics dominate the discussion. For example, in recent years family planning and Islamic banks have predominated.

There has always been concern within the NU about the correct method for issuing *fatāwā*, and in fact the second *fatwā* ever given (No. 2/1926) deals specifically with the subject by setting out a hierarchy of sources. The method initially was to take the consensus of Nawāwī and al-Rāfiʿī, respectively the *Minhāj* and the *Muḥarrar*. If this failed to answer the *Minhāj* had preference, but on failure then al-Rāfiʿī. In the case of further failure, then the majority of Shāfiʿī '*ulāmā*'; the reference here is to al-Maḥallī's (*Kanz al-Rāghibīn*), Ibn Ḥajar's *Tuḥfah al-Muḥtāj*, Sharbīnī's *Mughnī al-Muḥtāj* and al-Ramlī's *Nihāyah al-Muḥtāj*. Finally, the view of the most knowledgeable (*ʿālim*) might be consulted, but now it was a question of *taqlīd*, not *ijtihād*. It is this sort of arrangement that has given the NU '*ulāmā*' their reputation for traditional conservatism, by which most modern commentators merely mean *taqlīd*. The actual *use* of the sources called *taqlīd* seems to be overlooked and, as we shall see in the following chapters, this is a serious mistake.

In the years after 1926 the implications of *Fatwā* No. 2 were gradually worked through in a number of *fatāwā*. Thus, in 1930, *Fatwā* No. 104 provided that, while alteration to the texts of Qu'rān and *aḥādīth* were not permitted, changes in interpretation might be made to *fiqh* texts by the appropriately qualified '*ulāmā*'. However, this was recognised as a somewhat problematical exercise. The available legal texts are primary and must be respected as such. For example, to attempt to deduce law directly from Qur'ān and *aḥādīth* without consulting the *fiqh* texts is not permitted: '. . . those who declare law in this way are lost and lead others astray'.[159] This is of course a major point of disagreement between the NU and Muhammadiyah.

The emphasis on texts has taken several different forms. Thus, for example, it is generally forbidden for Muslims to study books written by infidels. The only exception that can be made is that those scholars who can distinguish between true and false may look at such texts.[160] In fact, the integrity of the Islamic text was the subject of considerable debate in the 26th NU Congress held in June 1979. Three *fatāwā* came out of the discussion. First, on the permissibility of writing the Qu'rān in Latin letters and in Braille.[161] Two opinions were cited on the question: Ibn Ḥajar forbids it if the other script changes the pronunciation; Al-Ramlī permits it if pronunciation is not changed. The NU considered it impossible to use Latin script that would not result in change, and the practice is thus not lawful.[162] On the related matter of recordings and cassettes of the Qu'rān the NU was undecided in its *fatwā*.[163] Recordings are not 'copies'—that is, not 'texts'. As for listening to them, two opinions are cited. The first, from Sh. Abdul Qadin, is that the sound comes from an inanimate object and, as it is not the Qu'rān, listening is permitted. The second, from Sh. Moh. Ali Al-Maliki, is that recording the Qu'rān detracts from its sacred nature and so recordings or listening to recordings are forbidden. Similarly, translations of the Qu'rān by non-Muslims must be treated with the greatest caution, and such

translations must not be read or quoted except by the learned and even then only for proper purposes.[164]

Essentially, the only proper texts are the accredited *fiqh* texts of the four Sunni *madhhab*, and there is a short *fatwā* (1983) to this effect.[165] The basic texts that appear in all or most of the NU *fatāwā* are [these listings use the Indonesian spelling/transliterations]:

Minḥāj al-Tālibīn by al-Nawāwī
Al-Muharrar by al-Dimashqī
Fatḥ al-Muīn by al Malībārī
Iʿānat al-talibīn by Sayyid Bakri al-Dimyātī [one-third of all NU *fatāwā* depend on this text]
Kanz al-Raghibīn by al-Maḥallī
Sharh Qanz al-Raghibin by al-Qalyubi
Tuhfah al-Muḥtāj by Sharbīnī
Nihayah al-Muḥtāj by al-Ramli.[166]

This brings us to the very important National congress of January 1992, at which the NU considered the whole question of *fatwā* as method in great detail. The following is the text on writing *fatwā*.[167]

System of taking legal decisions in examination of issues in the domain of the Nahdlatul Ulama

Main stipulations. The permissible texts are those regarding the teachings of Islam which are in accordance with the beliefs of the observers of the law and the community (see 27th Congress).

- To follow a school of law according to its *fatwā* is to follow its rendered opinions.
- To follow a school of law according to its method is to follow the way of thought and principles for setting of its law which have been built up by the imams of that school.
- What is intended by 'cultivation' is the drawing out of Islamic law from its propositions by the method of principles/roots and understanding.
- What is intended by 'statement' is the opinion of the imam of the school.
- What is intended by 'collective determination' is the collective effort to make a choice between a number of opinions of imam or '*ulāmā*'.
- What is intended by 'annexation' is the joining of the law for a certain case which has not yet been answered with one which has been answered by legal texts.
- What is intended by a proposed problem is a request for discussion of a case whether the title of the case only, some basic thoughts in addition or even the intention of revisiting a topic already discussed.
- What is intended by 'ratification' is the ratification of the results of the discussion of the problem by the Executive Board of NU, the National Conference of Learned Scholars or the NU Congress.

The system of legal decision making

A. Procedure for answering problems

The process occurs within the framework of the legal schools focusing on following established legal opinions:

- If one opinion exists in the legal texts it is used.
- If more than one opinion exists in the legal texts, 'collective determination' is used to select an answer.
- If no opinion exists at all, the process of 'annexation' is carried out collectively by the experts.
- If 'annexation' cannot be used the 'cultivation' is collectively performed using the following method by the experts.

B. Hierarchy and characteristics of the examination of issues

- All decisions on examination of the issues within the domain of NU taken according to the agreed procedure are of one status and do not cancel each other out.
- A decision which has received approval by the Executive Legal body of NU is considered to have force without awaiting the decision of the National Conference of Ulamas or the NU Congress.
- The characteristics of a decision at the level of the National Conference of Ulamas and the Congress are ratification of drafted decisions prepared beforehand and/or the approval of decisions which are considered to have far-reaching repercussions in all fields.

C. The framework for analysis of issues

In solving a social issue, the examination of the issue should use the framework of discussion (which is reflected in the resulting decision) as follows:

- Analysis of the problem (the cause of the problem is considered from a number of factors): economic, cultural, political and other social factors.
- Analysis of the effect (positive and negative) which have arisen by this case and the law should be considered from a number of different aspects: socioeconomic, sociocultural, sociopolitical and so on.
- Legal analysis (the legal opinion regarding a certain case after the background and the effects in all areas are balanced). Besides the formal legal decision, the decision should consider the positive opinion of Islam and law: legal status (the five grades), the basis from teachings of the observers of the law, law which is positive.
- Analysis of action, role and warnings (what must be done as a consequence of the legal opinion. Who must do it, when, where etc. and what mechanism must be put in place to ensure all goes according to plan): the political path (influencing government policy), the cultural path (increasing awareness among people via the mass media), the

economic path (improving social welfare), other social paths (improving the health of the populace, environment etc.).

D. Guidance for implementation

(i) Procedure for choosing an option
- Choose the more beneficial and/or stronger opinion.
- Employ as far as possible the hierarchy of opinions set by the First NU Congress: those agreed on by both Nawawi and Rafi‘, those supported by Nawawi alone, those supported by Rafi‘ alone, those supported by the majority of ‘*ulāmā*’, those supported by the most learned ‘*ulāmā*’, those supported by the most pious ‘*ulāmā*’.

(ii) Procedures for annexation
- This is carried out by examining that which is to be connected and that to which it is to be connected, and the guiding principles of annexation by the experts in annexation.

(iii) Procedure for decisions
- To be carried out collectively following the method of roots and understanding by experts.

On the surface this may appear to be a compromise for changing circumstances, but it is not just that: it goes much deeper in three ways. First, the conflation of ‘*ulāmā*’ opinion allows choice and emphasis not permitted pre-1992. This is still choice within scholarship but the implication is that *taqlīd*, as such, can no longer be a dominant feature for *fatāwā*. Second, the reference to *qiyās* specifically takes us towards but not all the way to *ijtihād;* by its return to Revelation, we can perhaps see a shift towards a more scripturalist position. Whether this is right or not remains to be shown. Third, the admission of evidence from outside Islam is a considerable departure from the pre-1992 position.

The 1992 reformulation of the *fatwā* method by the NU ‘*ulāmā*’ is not an isolated event. It has to be taken in the context of NU political history from 1945 to the early 1980s. As Dr Barton explains, events in this period had demonstrated the organisation’s failure to have a decisive influence in the national politics of the time. Indeed, with a power base in the uneducated rural masses and with the death by old age or accident of its great names it was a movement without form. Nor could it seem to compete intellectually with the secularism of the era, particularly Pancasila—indeed, parts of the NU actually took the five principles as some sort of expression for Islam.[168] The NU seemed intellectually bankrupt for the current political and social issues in 1980s Indonesia, and its response in the 1984 Congress was to recommend a return to the ‘*Khittah* (Charter) of 1926’ when the NU was founded. What this was in detail and what it is at present is the subject of debate.[169] The leading internal explanation is by Ahmad Siddiq, whose *Kitthah Nahdliyah*[170] was published in 1979. It stresses that NU is a

social-religious movement and that the '*ulāmā*' are central. This is *the* fundamental premise and it places the 1992 *fatwā* as a historically derived method (from *Fatwā* No, 2/1926), reformed for contemporary Indonesia. In the third section of the *fatwā*, 'The framework for analysis of issues', the importance of general cultural and social factors is stressed in making *fatāwā*. The *fatwā* also stresses the importance of formal organisation for decision and policy making in which the '*ulāmā*' hold authority by reason of their command of the texts.

The texts are primary: the NU method is prescriptive from scholarship; it is not Muhammadiyah didacticism; nor is it prescriptive in the Persis sense.

Majlis Ulama Indonesia (MUI)

The MUI was established in 1975 at the initiative of government. The motive was to establish and control the public expression of Islam under state (here, Department of Religion) auspices. The MUI was to be *the* national authority. In the politics of the time (the early 1970s), considerable controversy existed on matters touching religion, such as the draft marriage bill of 1973. The context, therefore, was religious controversy, the then overwhelming New Order dominance in politics and the weakness of Islam as a political force. The reconciliation of these from the government point of view was the bureaucratisation of Islam, and it is this, in its most extreme form, which MUI represents. Even a brief glance at its Statutes will confirm this. Apart from issuing *fatāwā,* other committees include those with such functions as missionary work, education, relations with outside bodies, youth and family, economic matters and a committee for the 'Islamic fraternity'.

But the context is a long way from a determination of what the MUI has actually done in its *fatāwā*. In his recent analysis Professor Mudzhar[171] has shown that, out of 22 *fatāwā* examined, only three demonstrate any sort of government policy influence. The remainder show no discernible government line; in some cases, the *fatāwā* are actually opposed to current policy. Dr Mudzhar has also shown a decrease in the number of *fatāwā* issued since 1986, apparently as a result of a conscious policy. Instead, the practice of issuing 'letters of advice' (*surat keputusan*) has been adopted, although whether one can truly distinguish between these and *fatāwā* is debatable.

The MUI is now a quarter of a century old.[172] In 1995 it published a collection of its *fatāwā*, and an updated version was produced in 1997. This, the *Himpunan Fatwā MUI*, is a basic text for this book. There are two features of particular interest. First, the MUI is state-appointed and state-financed. The obvious issue is the impartiality of its *fatāwā*, a question as old as *fatāwā* themselves (see above). Second, we have the methodology issue. The members of MUI are drawn from a wide spectrum of Muslim opinion, and experts in other areas such as finance, science and the social

sciences are freely consulted. Method and source of authority tend to be rather eclectic, indeed somewhat problematic. The material shows a reliance on Qur'ān and *aḥādīth* but in the form of known explanation from the texts of the Shāfiʿī *madhhab*. Occasionally, there is reference to Middle Eastern *fatāwā,* especially in the last few years.

The MUI is organised at national level and there are also provincial MUI committees. In theory the provincial bodies are subordinate—that is, policy is established at the national level. The intention is to create a nationwide uniformity in the practical expression of doctrine, but in fact it appears that quite often the provincial committees act on their own initiative. This is a vexed issue, yet to be settled, but even a brief glance at the available material shows the extent to which provincial committees act without central control.[173] This is a subject for future research.

We turn now to the Statutes of the MUI on the method of arriving at a *fatwā*. These were first established in 1975 and appear in the later *Himpunan* (Collections) of 1995 and 1997. The current regulation begins by noting that, in the periods 1975–80 and 1980–85, *fatāwā* of the MUI were determined by the Fatwā Commission and administered by the Chairperson and Secretary of the Fatwā Commission. On the basis of the decision of the Plenary Meeting of the Board of the MUI of 18 January 1986, a change in that procedure was decided: decisions regarding *fatāwā* of the Fatwā Commission were thenceforth to be taken by the Executive Council of the MUI in the form of a 'Certificate of Decision of Determination of Fatwā', to be administered by the General Chairman and the General Secretary together with the Chairman of the Fatāwā Commission of the MUI. The Guide to Procedure of Determination of Fatwā is as follows:

1. The bases for *Fatwā* are:
   (a) the Qu'rān;
   (b) the *Sunna* (traditions and customs of the Prophet);
   (c) *Ijmaʿ* (consensus of opinion of Muslim scholars);
   (d) *Qiyās* (reasoning by analogy).
2. Discussion of an issue on which Fatwā is required must take account of:
   (a) the bases for the *Fatwā* referred to above;
   (b) the opinions of Islamic leaders (*imām*) of the schools of thought on Islamic law and leading Islamic scholars obtained through research into Qu'rānic exegesis.
3. The discussions referred to above are a method for determining which Qu'rānic exegesis is stronger and most beneficial as a *Fatwā* for the Islamic community.
4. When an issue on which a *Fatwā* is required is unable to be addressed in accordance with the above procedures it is determined in accordance with interpretation and judgement (*ijtihād*).

5. Those with authority to hand down a *Fatwā* are the following:
   (a) MUI with respect to—
      (i) issues of religion of a general nature and which concern the Indonesian Islamic community generally;
      (ii) issues of religion relevant to a specific region which are considered to be applicable to other areas.
   (b) MUI for First Level regions with respect to issues of religion of a local nature and regional cases but after consultation with the MUI and the Fatwā Commission.
6. A meeting of the Fatwā Commission shall be attended by members of the Fatwā Commission as nominated by the Executive Council of MUI and the Executive Council of MUI for First Level regions with the possibility that participation may be invited from experts when it is considered necessary.
7. A meeting of the Fatwā Commission shall be held when:
   (a) there is a request or an enquiry which is considered by the MUI to require a *fatwā*;
   (b) the request or enquiry derives from the government, social and community institutions or the MUI itself.
8. In accordance with the rules of the Meeting of the Fatwā Commission, the form of the *fatwā* regarding a particular issue must be submitted by the Chair of the Fatwā Commission to the Chair of the Council of MUI and MUI of the First Level regions.
9. The Executive Council of the MUI/MUI for First Level regions will reformulate the *fatwā* into the form of a Certificate of Decision of Determination of a Fatwā.

It is apparent from this summary that sources for *fatāwā* are arranged in hierarchy, as is the competence of the national and provincial committees. As we shall see, in practice the MUI *fatāwā* rely primarily on *naṣṣ* from Qu'rān and *aḥādīth* accompanied in some, but not in all cases, by reference to *fiqh* texts. The texts are invariably from the Shāfiʿī *madhhab*. However, one occasionally finds references to contemporary Middle Eastern (Egyptian) writings, in particular to those of Shaltūt as well as to less well-known contemporary writings. The range of material will appear in the *fatāwā* cited in later chapters.

'Bureaucratic' *fatāwā*

By this I mean a diverse set of publications put out by ministries having committees or councils for 'the evaluation of Islamic law' with reference to the activities of the ministry. The best example is the Ministry of Health which, over the past 30 years or so, has published rulings on medical ethics at the request of hospitals and medical staff. To some extent, there is an overlap with the material in MUI *fatāwā*, but I have included them in a

separate section here because the deliberations of councils over time show a marked sense of the 'ethical' in the practical. Really fundamental issues in science are raised and these go to the primacy of Revelation. The material is in the form of departmental booklets, from 1955 to the late 1970s.

So far as methodology is concerned, there is no particularly favoured approach. The usual method is a rather indiscriminate reference to Shāfiʿī textbooks, together with reference to the Qur'ān and the *aḥādīth*. Methodology, as such, is not the concern of councils. The intention is to justify an answer that is already decided on—an *expost facto* justification, something not unknown in the history of *fatāwā* but one rarely so well exemplified as in this material (see especially chapter 4).

Miscellaneous sources

This is a reference to a mass of heterogeneous material, some published by individuals and some by interested groups in a variety of media. The latter include booklets, local newspapers, small and mostly short-lived journals and cyclostyled comment. There is a wide variation in quality and circulation. But whatever the deficiencies it is still remarkable that the tradition of personal *fatāwā* in the rural areas and in the poor urban areas continues at the start of the 21st century. Perhaps this is not so surprising: after all, the great majority of *fatāwā* have these as their historical milieux, and it is a subject which deserves its own special study in Indonesia.

There is not space here to describe the *fatāwā* from this source, but references to material are not lacking. Well-known individuals are briefly indicated by Dr Khoiruddin Nasution.[174] There are minor groups, such as Al-Jamʾyatul Washliyah, and the more publicly prominent ones, such as Dewan Dakwah, which includes *fatāwā* in its *Media Dakwah*.

The individual groups vary widely in their theological position. There is no consistency but neither should one seek it. The context of an individual *fatwā* is totally determined by the capacity of the audience to whom it is addressed. One has a range of very simple pieces directed to the uneducated, to the more complex at a higher level. Methodology is equally diverse. (There is a long and complex example in chapter 5.)

DOCTRINE

This book is about Islam through *fatāwā* in 20th/21st century Indonesia—why then a special section on 'doctrine' which, at its briefest, is religious belief or a body of instruction? The answer is that throughout the Muslim world Islam has always had to face ecologies, languages and cultures which are quite different from the Arabic Middle East. Islam is a universalistic theology and, while it might be native to Indonesia *now,* this place is not its *fons et origo.* At the same time, a perceived purity of doctrine is crucial for Islam whatever the time, place and circumstance.

For Indonesia these issues have been discussed extensively in the disciplines of law, philosophy, literature, anthropology and political science.[175] However, these are views from the outside of what is and is not 'Islamic'. Some preliminary *fatāwā*, mostly from Persis and the NU, take us into the internal view of purity of doctrine.

Death, the great universal, is always a good place to start; the Revealed religions by their nature are doctrinally clear on death. We have ritual, a corpse and interment. How do these translate for Islam in Indonesia? An early NU *fatwā*[176] allows the repair of grave markers before a corpse has rotted and during the rotting process, provided this work does not prevent a new burial nearby. This is a reference to the respect owed to a corpse, almost approaching sanctity in some Indonesian understandings (see below). It is a practical solution to an ever-recurring problem and is supported by a short quotation from al-Ramlī's *Nihāyat* on treating the corpse properly. On the other hand, the decoration of a grave with silk is forbidden;[177] that privilege is reserved for the tomb of the Prophet. Other materials can be used but the practice is better avoided. The intention is to prevent a grave becoming a *keramat* (a site possessing supernatural qualities), which has always been a feature in Indonesian Islamic practice. The line between respect for the corpse, a gravesite and the special efficacy of a gravesite—amounting almost to special intervention for the living through prayer at such sites—has always been a fine one. The contemporary popularity of *ziarah* (a devotional visit to a sacred place)[178] is a current example.

We have come from the corpse to sacred sites in fact to the 'sacred' itself. These all come together in a Persis *fatwā* (No. 144 by Ahmad Hassan) which asks the question: Do Prophets remain alive in their graves after death? In the usual Persis style, Ahmad Hassan discusses a number of *aḥādīth*, all of which are flawed in his view, and comes to the conclusion:

> EXPLANATION: All the *hadith* that are cited to prove the Prophets are alive in their graves are flawed and can not be used as a justification especially given that they contradict the Qur'an.
>
> Allah has already explained to us that the Prophets are no different from ordinary men when it comes to the certainties of life and humanity—they eat, sleep, drink, die and so on. Allah said:
>
> —Say to them—I am no different from men like you except that I have been given divine revelations. (Al-Kahf 110)
>
> —That you (Muhammad) will die and they too will die. (Q. Az-Zumar 30)
>
> —And We did not send a messenger before you besides those men to whom we gave revelations, so ask the experts if you don't know, and we did not make them bodies that did not eat, and we did not make them everlasting. (Q. Al-Anbiya 7–8)
>
> So with this we know that the Prophets are already dead, meaning that their souls and bodies are separated and that the *hadith* reported can not be correct.
>
> As for the *hadith* that reports that the Prophet's soul will be returned to him

so that he may respond to blessings given in his name—that contradicts the passage from the Qur'an which reads:

> Allah receives people's souls when they die or if they are not dead when they are asleep. Then he stores the souls of those who are indeed dead and returns the others until a certain point in the future. (Q. Az-Zumar 42)

This means that Allah will not return the souls of the dead to their bodies until Judgement Day.

On the related question, Are Prophets still alive?, we have a complex *fatwā* (No. 500) which is essentially a discussion of Revelation and the limits of reason. It begins by noting that Revelation is a mystery that cannot be proven by reason alone. The point is that belief in Revelation is fundamental and the Qur'ān itself is perfect. A *ḥādīth*, however, is not so and is thus open to reason and question. With this preface, the *fatwā* then goes onto the Prophet Īsā:

> Now we return to the matter of the Prophet who is still alive. According to verse 158 of An Nisa, the Prophet raised Nabi Isa to Himself, while according to *hadith* he will descend again. All of the *hadith* use the words 'will descend' and not 'will be born' or 'will come/arrive' whereas sentences which refer to Mahdi use the words 'will be born' and never 'will descend'.
>
> So from the Qur'an and *hadith* it is clear that Isa was raised and will descend. If he will descend then he must be above. Is it impossible for Allah to raise a person to a star? Not at all—not only is it not impossible—Allah raises all people to a different world. However, because it does not happen before our eyes it is so difficult for our sense to accept. If forty years ago we said that someone from Bandung could arrive in Jakarta within one hour people would have laughed and called us crazy, but now we can arrive within half an hour. We are not startled because it happens before our eyes. There are many things which were once thought impossible but which are now a reality.
>
> The point is, the basis of our religion is the Qur'an and *hadith* and not our own thoughts and instincts.
>
> However, there is one path for people who do not want to accept that Isa will descend—they can reject all the *hadith* which say he will on the basis of the reason given by Imam Ahmad bin Hambal. [sic] He says that there are no valid *hadith* on matters of war, things which will happen in the future and explanations of the Qur'an (tafsir).
>
> People who take this view can then explain the Qur'anic verse by saying that it means that Isa is dead already and that there are no longer any Prophets alive.
>
> There are those who believe Nabi Khaidlir or Nabi Khidlir are still alive but there is no valid authority for this view.

A further *fatwā* on the parents of Īsā (No. 567) reinforces this approach. On the basis of the Qur'ān (S 20–21) the virgin birth is accepted, and Ahmad Hassan goes on to say:

> There are those who don't want to accept that the laws of science and nature are flawed. They forget that all we know about the laws of nature is what [we] see and understand. How many times have we seen an animal or human born with too many body parts or give birth to a baby not of its species. The newspapers and magazines write that it is against the laws of nature but it is only against what we know of the laws of nature and not what Allah knows. How can we know those things which appear to be against the laws of nature to us have not always had a way, have not always been possible, like the creation of Isa? Therefore the extraordinary creation of Isa does not mean that he is more exalted than the other Prophets—He too was made by Allah.

It is important to compare these theological positions with the NU treatment of 'folk Islam'. Thus, celebrations to commemorate spirits who guard the village or to make thanksgiving offerings to them are forbidden.[179] This is a superstition. Similarly, while it is meritorious to bury the placenta, it is forbidden to light candles and plant flowers above it.[180] While the practice is said to be forbidden as a waste of money, the real reason from the citations is a fear that some element of superstition may arise. A final example: the souls of the dead do not inhabit the deceased's former village, and whatever people might hear moving at night, it is not that soul.[181] Superstitious usage has a wide context, and includes even *imām* and '*ulāmā*'.

There are two contrasting *fatāwā* on *imām* and '*ulāmā*'. The NU[182] permitted the touching of an *imām* but recommends that the practice be avoided because the generality of the Muslims might come to believe it was a duty or meritorious. The Persis approach, on the other hand (No. 289), is to deny any special position to '*ulāmā*' at all, either as a person or as an authority. We can leave the final word with the Muhammadiyah, which has discussed magic-spiritualism and 'hidden' and 'open' knowledge.[183] The answer is a series of propositions consisting of citations from the Qur'ān,[184] the result of which is that some knowledge can be learned and some cannot. Magic is a kind of knowledge but it is without system and cannot produce any practical result. One can compare this with the Persis position on miracles (No. 628) which, if properly attested to in the Qur'ān, must be accepted. The same is true if a chain of *aḥādīth* is proven. Secular denial of miracles on rational grounds is to be rejected because '. . . we cannot be guided by logic but by [Qur'ān and *ḥadīth*]'. One may compare this with an early NU *fatwā*[185] which permits drinking oil in which the Qur'ān has been dissolved. Whether this is still acceptable practice today is disputed.

With these preliminary examples we can now take the doctrinal issues directly.

Unacceptable sects:[186] purity of doctrine

Sectarianism is a problem in all Revealed religions, and Islam is no exception. Nor is Islam free from its extreme form, which is heresy; there is a long and complex history of Muslim sectarian movements. By and large,

however, Indonesia has been remarkably free from doctrinal quarrels severe enough to entrench lasting theological distinctions. The discussions that have taken place have been in politics, particularly in the postwar years (see above). However, this does not mean to say that sectarianism or accusations of heretical practices have not occurred. They have, and apparently their occurrence appears to be especially common in modern times. While it is too early to give reasons for this, it is not unlikely that the existence of determining bodies (Persis, NU, MUI and Muhammidyah), which give an opportunity for doctrinal debate and a forum for a determination, may have contributed much. Opportunity at national level for debate in various media forms, combined with systems of organised publication, tend to encourage a proliferation of views, some of which can be extreme. The best example of doctrine from the internal point of view is a Persis *fatwā* (No. 621). The argument, by Ahmad Hassan, is straightforward:

> Q—What is the law on people who follow thariqah naqsyabandiyah or like paths? Is it recommended or is it an innovation?
> A—All of the thariqah which don't use trickery can not avoid performing two or three types of innovation or more. The dzikir and other ways are not regulated by explanations from the Prophet. Their timing is regulated, but that was not commanded. When they dzikir they must picture something or their teacher.
> Q—Is it wrong to dzikir in some organised fashion?
> A—Something cannot be regarded as ibadat if there is no authority for it in the Qur'an or *hadith*. The Prophet has already shown us the correct method to perform every act of ibadat. If we could perform any act of ibadat as we liked there would be too many acts for us to regulate and it would lead to crazy, complicated results.
>
> As for picturing a teacher while performing an act of ibadat, over time that will unconsciously lead people into apostasy.
>
> In short, there are no thariqah which are valid except the thariqah of the Qur'an and the Prophet, that is, performing their commands and avoiding the things which they prohibit. Apart from that, everything is an innovation and an error.

The emphasis here is on purity of doctrine; it is purity which establishes the boundary between Islam and 'not Islam'. That which is not stated in the Qur'ān is already outside the boundary—an innovation. However, as we shall see for Persis in later chapters, the application of the principle is more complex than might be expected from the passage just cited.

Another example, this time from the NU, can be found in its first *fatwā*,[187] where the basic definition of 'Muslim' is one who belongs to one of the four Sunni *madhhab*. When the subject was revived in 1939,[188] the following elaboration was given. One can only find the truths of Islam in the texts of the four Sunni *madhhab*. An extra-text source must lead to the confusion of the truth and falsehood and error.[189] One must accept text

authority. While the NU did not exist at the time of the Prophet, nor was it known in any other form, nevertheless it is a proper organisation because it is based on a proper intellectual descent through scholars from the time of the Prophet.[190] This *fatwā* cites no sources, but the reference must be to some *silsilla* of the Shāfiʿī *madhhab*.

From the personal boundary, we can move now to the doctrinal problem of unacceptable sects. An early NU fatwā[191] from the Congress of 1937 debated the question of whether being at prayers with 'Kharajites' invalidated one's own prayers. Although the discussion is rather minimal, the essential reference is to the Kharaji[192] movement in a general sense plus a particular reference to the form of prayers, in particular to any innovation (*bidʿa*), unacceptable from the Shāfiʿī point of view. The question is not a new one, indeed it is perennial[193] (see also chapter 2). The answer in this *fatwā* was: (a) it is not legitimate to form a congregation with members of the Kharajites if the imām recites improperly; (b) if, on the other hand, the recitation is correct (presumably from the Shāfiʿī view, though this is not stated), then the prayers are valid; (c) however, even in this circumstance the practice is *makrūh* (reprehensible/abominable). The choice of this classification for these circumstances is interesting. An action classified as *makrūh* is not, strictly speaking, prohibited; there is no punishment in the Shāfiʿī *madhhab*. However, in the present case the *fatwā* goes on to classify taking part in prayers as *ḥarām* if the majority of the congregation is Kharajite because it will lead the Sunni followers astray. In other words, *makrūh* is tending towards *ḥarām*. One final comment: 'Kharajite' is nowhere defined in this *fatwā*. All we have is the source for the *fatwā* itself, which is given as '*Al-Minhaj Al-Qawim dan Mauhibat*'.[194] Perhaps the reference is to the then contemporary dogmatics of, for example, something like today's *Ībaḍiyya*. Or can it refer to some non-Sunni group which existed at that time (1938) in Indonesian Islam?

One last example, this time from Muhammadiyah, the *Majlis Tarjih*, which has two interesting comments. The first is in response to the question:[195] Is the Muhammadiyah *Majlis Tarjih* itself a *madhhab*? The answer consists of a lengthy linguistic analysis of the term *madhhab* in which shades of meaning—the place one travels through, road, a point of departure—are identified. The latter is the one selected as relevant for *fiqh* in Muhammadiyah thought. It is only in this sense that *madhhab* is used in the deliberations of *Majlis Tarjih*. The question was raised again in 1995,[196] and the answer follows from the earlier response. '*Madhhab*' means the method of finding the application of *fiqh* rules based on Qur'ān and Sunna and arrived at through a process of discussion leading to accepted agreement and general consensus. '*Madhhab*' in the sense of 'school', as is the usual use, is properly confined to the four Sunni schools only.[197] The *Tarjih* is not a school in this sense. Two passages from the Qur'ān are cited: S VII:3, 'Follow the Revelation given unto you from your Lord and follow not . . . other than him . . .'; S LIX:7, '. . . Take what the Prophet assigns to you and deny yourselves that which he withholds from you . . .'.

We turn now to the interests of the state in purity of doctrine, and in particular to the *fatāwā* of the Majlis Ulama Indonesia, whose primary function is to define acceptability or purity with state interest in mind. The MUI issues *fatāwā* as well as 'letters of advice'. The latter are not *fatāwā* but rather position statements. They consist of sets of unsupported assertions, with one exception (see below). However, they are important because they direct us to two things. First, they are written in response to requests from the Attorney-General's office and date from the late 1970s. The purpose of the request is to give colour to the policy of that office in banning activities of fringe groups acting in the name of Islam. The issue is really one of maintaining public order (as defined by government) and preventing dissension within Islam in Indonesia. The second point and connected with this is that these groups, commonly called 'fundamentalist', while they might be theologically illiterate, do also express a 'folk' Islam. This must not be underestimated, and to discuss it as an aberration is to deny its reality for millions of believers. Professor Roy Ellen, for example, in what is still the best general account, emphasises the variety of religious practice socially. He maintains that there are 'various modes of Muslim practice and belief [which] are not clearly separable'.[198] These are the subtexts to scriptural materials. In other words, the interest of the state in public order, the function and competence of a body such as MUI, the local practices of Muslims and the classical texts all come together in 'unacceptable' sectarianism. There are three examples.

The Aliran fatwā[199] *(1983)*

'*Aliran*' means a stream, a flow, and hence a group, here with an ideology of Islam. In this case, the somewhat amorphous membership rejected the Sunna of the Prophet, and hence *aḥādīth*. This position strikes not just at the central position of the text in Islam but also denies Islam's historicity. Books containing these teachings were banned by the Attorney-General of Indonesia. As might be expected, the MUI *fatwā* rejected the *Aliran* position and urged its followers to 'return to the truth'. What is the argument?

The answer is in the citation of selected passages from the Qur'ān which state the centrality of the Prophet for the Divine message. In all there are nine passages,[200] which refer to 'apostle', 'one who guides' and so on. Those who reject the apostle are unbelievers. There is no discussion of the citations, and they are taken as having self-evident meanings. This is acceptable up to a point but it does not deal directly with the relation between Qur'ān and Sunna. While S XVI:44 '. . . We have sent down to you the Message that thou may explain clearly to men what is sent to them . . .' is cited, the implication is not spelt out. That is, the Sunna, being an explanation of the Qur'ān, is subordinate to it, and the greater part of the Sunna is a reiteration and explanation of the Qur'ān and is thus integral to it. However, there are rules of *fiqh* which originate in Sunna because the

Qur'ān is silent.[201] The MUI *fatwā* does not discuss whether the Sunna in this case is an independent source for Syariah. As Professor Kamali points out,[202] this is an important issue because it defines the function of the Prophet. To this extent the *fatwā* is deficient: the key passage in S XVI:44, cited above, is held by some Muslim scholars to be inconclusive, although this is not the position of the majority in the Shāfi'ī school.

This brings us to a further point: because the issue is not discussed, the MUI is forced to cite two *aḥādīth*[203] to justify citations from the Qur'ān. However, to cite *ḥadīth* where the issue is the propriety of *ḥadīth* itself has to be read as a failure in logic. Whether one agrees with this comment or not, the logic issue could have been avoided by a fuller analysis[204] of S XVI:44. It is difficult to escape the conclusion that the real logic of this *fatwā* was to implement state policy—here the prevention of dissension among Muslims on doctrinal dispute.

The Ahmadiyah Qadiani fatāwā[205] *(1984)*

The Ahmadiyah[206] Qadiani challenge lies in the claim of its founder to be the Mahdi, the (true) Prophet. For Indonesian Islam the claim is outrageous—the Prophet Muhammad is the Seal of Revelation,[207] and this is of course true for all of Sunni Islam. The answer was inevitable, the Ahmadiyah Qadiani is an unacceptable sect and the MUI *fatwā* says so very shortly. The answer is so obvious theologically as to need no elaborate discussion. However, this is not the end of the matter. There is a state dimension. The *fatwā* cites a Letter of Authority (*Surat Keputusan*) from the Minister of Religion given in 1953. In the Indonesian legal system such letters, more commonly called 'Instructions' (*Instruksi*) are binding decisions made by the appropriate minister. They have the force of law and they are, in many respects, more important than legislation. The letter says that the Ahmadiyah Qadiani dogma causes serious difficulty in matters of ritual, dissension within the Muslim community, and has the potential to disturb public order. It does not, however, define the sect as not Islamic. This is the MUI summary of the1953 letter. The summary is accurate so far as it goes, and the MUI *fatwā* proceeds to recommend that the letter be reviewed and the sect declared not Islamic by the Minister of Religion.

As it stands the *fatwā* is minimal, so that we do have to pursue the reasoning a little further, and this can best be done by looking at another MUI source. This is the discussion in the MUI Committee of Sumatra Utara[208] in Medan in 1982, which consists of the following material. First, a reference to the national MUI *fatwā* of 1980, which is an earlier version of the one just described. Second, and much more important: MUI Sumatra Utara went back to a historical source, a conference decision of the '*Alim Ulama*' held in Sumatra Timur in 1935, to discuss the Ahmadiyah Qadiani. The decision of the conference, signed by 53 '*ulāmā*'from Medan and the surrounding districts, is quite short. The founder is '*murtad (kafir)*' as are his followers. The most interesting feature is that the conference membership represented

a wide spectrum of learned Muslim opinion. There was one *kathi* (judge), a number of *guru besar* (heads of religious schools) and several *muftī*. In other words, in 1982 the MUI Sumatra Utara was prepared to take evidence from a conference of 50 years earlier which represented all shades of opinion, from textualists to various forms of scripturalist. There was no problem with eclectic source, indeed for the MUI in general the issue does not seem at all important. For example, the MUI Sumatra Utara also cited a long paper originally produced for the government of Pakistan (July 1974) recommending that the sect be declared not Islamic.

This is the background to the MUI *fatwā* of 1984. The years just preceding, from 1979 onwards, were years of considerable intellectual turbulence in the Muslim world. Iran had founded an Islamic Republic in 1979 with the overthrow of the Shah and, it seemed, a decisive defeat for secularism. Muslim activists from all countries including Indonesia and Malaysia looked to the immediate advance of the Muslim state. From the point of view of the Indonesian government this was an anathema, and any deviation from Indonesian Sunni practice could not be tolerated. Indeed in 1984 the national MUI issued a *fatwā* on Shīʿī Islam. Doctrinally it is not of great interest, merely representing the well-known points of doctrinal difference on *aḥādīth, ijmāʿ*, the succession of the first four Caliphs and, most importantly, the *imām* and the Shīʿī concept of Islamic government arising from an *imamate*. It is this last which, in the context of the times, clearly prompted the *fatwā*.

The Darul Arqam (Al-Arqam) fatwā *(1994)*[209]

This *fatwā* provides us with a further example of the international dimension. The Al-Arqam originated in Malaysia in the late 1960s and by the 80s had gained adherents in Indonesia, particularly in Sumatra. However, it remained primarily a Malaysian movement, and for this reason we must now leave Indonesia for a moment.

For multiethnic Malaysia the government must tread a fine line between being seen as pro-Islam for its Malay constituency and yet not religiously extreme for the non-Malay constituency. Its solution to keeping a balance has been to incorporate a 'moderate Islam' within the institutions of the state (i.e. religious courts, state religious departments, *fatwā* councils, educational institutions). Any Islamic movement outside these institutions is a perceived challenge to the status quo. Al-Arqam was such a movement.

So far as doctrine is concerned the movement had two main principles. First, to implement a social and economic system based on Islamic values and to operate this, so far as possible, in contemporary Malaysia. It initially established small-scale manufacturing and trading enterprises which were successful and demonstrated an alternative to contemporary Malaysian economics, especially with reference to Malaysia's Muslims. The movement in fact demonstrated that an Islamic activist economics could be successful. It was a viable alternative to state-sanctioned economics.

Although the Arqam financial base and trading activities posed no direct threat to the national finance system as such, it did show the pilot success of an alternative system. This, combined with a revitalisation of Islamic economics and banking, both in Malaysia and in the wider Muslim world, gave a political prominence to the movement. It was possible to be Muslim and economically successful *without* state support. This was a radical challenge to government in Malaysia, where 'Muslim' and 'Malay' has always equalled economic weakness. It is the Malay-Muslim voting constituency which is crucial to the governing party (UMNO) in Malaysia.

But the Arqam has an even more serious aspect. Not only was an alternative economic system shown to be viable,[210] it was combined with the symbolically powerful theology of Mahdism. Even more disturbing for the status quo, the Arqam version of Mahdism did not involve any rejection of orthodox Sunni theology. While Mahdism is normally associated with Shī'a, it also has an accepted and respected place in Sunni thought in the sense of *mujadid* (renewal), not necessarily the Bringer of the Last Day.[211] The idea of renewal is the key. The Arqam see renewal as personal, social and economic and, as well, a whole Islamic world, and the individual is obligated to renewal, the fulfilment of which will be an Islamic world.

These are the ideas expressed in the works of Ustaz Ashaari Mohammed,[212] the founder of Arqam. It is the combination which is the real threat to whatever state order claims 'Islam' for itself. The only possible means of defence for the state are two: the first is to act for the 'preservation of public order'; the second is to show that movements such as Arqam are 'deviant' from Islam. The latter is the only real argument in Islamic terms. On the other hand, however one reads the Arqam material, it is impossible to show anything except a respectable position from an individual Muslim perspective. Citation of Qur'ān[213] and *aḥādīth* is accurate and appropriate for the argument that perfection of the individual is also (a step towards) perfection of society. Spiritualism is in fact an essential component of a modern society, is not separate but is essential for social and individual fulfilment. The 'sufism' of Arqam is a 'social sufism' if one may say so. But what is it?

It begins with the individual who is in and from, but not out of, society. His or her duty is to achieve piety (*taqwa*), which must then inform relations within society—that is, the public face of Islam, as in modes of prayer, dress and family organisation. This whole then determines processes of the material world (i.e. money, economics) which, if properly conducted, reinforces the personal struggle for piety. The whole thus leads to an 'Islamic society'.

Once such a system could be shown to work, and Arqam did demonstrate an impressive degree of success in small-scale economics, the option of Mahdism became a rational possibility in the minds of its adherents. But from where was the Mahdi to come? The answer, in Arqam's view, was to claim the at present occluded Sh. Muhammad Abdullah al-Suhaimī[214] as

Mahdi, and he will reappear at a time determined by God. There are of course *aḥādīth* which support this, and the evidence commonly cited in the Arqam literature includes the works of Ibn ʿArabī and Ḥasan al-Irāqī. Ustaz Ashaari did not himself claim this status, being content instead to be the forerunner or precursor to the reappearance which was imminent.

It appears to be this which really stirred the Malaysian authorities to act. The idea of imminence, combined with a successful economic alternative, was decisive. Just as importantly, the person of the Mahdi was a local Southeast Asian Muslim, being of Malay-Javanese descent. Of course a link by family descent with the Arabic Middle East was also claimed, but the context of Malaya–Java was primary.

The Malaysian government answer was a National Fatwā Council meeting (August 1994), declaring Arqam a deviant sect. From a strictly technical point of view, this *fatwā* is unimpressive. The whole issue of the occluded Mahdi is avoided rather than debated; in particular, the *ḥadīth* of Abū Huraira (in Abū Dāwūd) on imminence and the promised *mujaddid* is ignored. Instead 'deviance' is defined as 'causing division' in Muslim society. This is not an argument from within Islam but a political response to a seemingly successful alternative which was both economic and personal neo-Sufism in nature. These doctrines did in fact constitute a serious challenge to the government's legitimacy as a protector and promoter of Islam, both politically and in its bureaucratic aspects. Viable alternative methods of Islamic life were being demonstrated, but again there is nothing heretical in Arqam doctrine as explained in the main text, *Aurad Muhammadiah*. The struggle was over the respective forms of legitimising the competing claims to the 'right Islam' and, hence, gaining the loyalty of the Malay constituency. With apparently considerable financial assets and schools and communes based on Islamic values, it obviously constituted a threat to the state version of Islam.

It is '*state*' in Indonesia, as in Malaysia, which is the key to understanding the MUI *fatwā* of 1994. The *fatwā* begins with a short citation from S V:3. This *ayat* is essentially concerned with the rituals of the Haj but it also includes admonitions as to mutual help in righteousness and piety, and forbidding transgression and hostility. The *ayat* in fact has nothing to do with the decision that declares Arqam a deviant sect. The real proceedings actually started in provincial MUI in 1992–94 in which Aceh, West, East and South Sumatra committees all banned the Arqam texts.

Direct state intervention took the form of a decision (*keputusan*) and Letter of Instruction from the Attorney-General's office banning Arqam texts in 1993 and 1994. The main thrust of the instruction was not so much on deviance as on the threat of sowing dissension within the Muslim community. Of course, one cannot really separate the two, and the same point was made in the various MUI regional committees. However, in these there was a reluctance to fully accept that Arqam was in fact truly deviant, though a degree of extremeness in some aspects of doctrine was found.

As we saw a little earlier, the main issue of Mahdism is debatable but was not really discussed in full in *fatāwā* or in the Letters of Instruction.

The lack of detailed discussion in such public and state-interest matters in the *fatwā* itself is the crucial point. Other organs and fora were extensively engaged, especially newspapers and pronouncements by the organs of Muhammadiyah, NU and other Muslim groups.[215] This fact is worth pursuing a little further. A good example, from the leading journal at the time, *Mimbar Ulama*,[216] is an impassioned debate on how Arqam doctrine should be approached. The discussion is focused on Ashaari's book *Aurad Muhammadiyah*, the main points of which are (inaccurately) described. Common ground, accepted by all, is that Arqam doctrine tends towards the extreme and for this reason may mislead and cause division among Muslims. The issue is how this should be dealt with. Solutions range from an outright ban on the book to dialogue with Arqam. The latter option was favoured by PP Permuda Muhammadiyah (the youth wing of Muhammadiyah), while opposed by senior members of the same organisation. In the event, dialogue was not possible and an apology was actually offered to Arqam members. The Jam'iyah al-Irsyad (a well-known reform association, originally founded in the 1920s by Arab Muslims) proposed an outright ban because the book caused dissension, particularly between the NU and Muhammadiyah, the former being reluctant to ban the book. So far as MUI is concerned, its position is criticised by students of IAIN Jakarta as an attack on human rights and the failure to accept open dialogue in dogmatics. This is not to say that the IAIN group accept the Arqam dogma; rather, the objection is to suppression of open debate. The article in *Mimbar Ulama* ends with a list of the sins (*dafter dosa*) of Arqam. These include claims to Mahdism (above) and the marriage practices of Arqam members which, true or not, are taken as deviant or tending towards deviance.

The MUI *fatwā*, therefore, is not without its critics, thus illustrating that purity of doctrine is always problematic. The internal boundaries of purity, however defined, are never certain whatever the source of the ruling. *Fatāwā* are fluid and debatable but always debatable within the premises of Islam—that is, the Revelation granted to the Prophet, and the succeeding centuries of texts and commentary.

However, there are other boundaries where the Islamic premise itself is not sufficient. Islam must justify *itself to itself* in the face of (a) secularism and (b) Christianity in Indonesia. The secular position, in its broadest sense, says that God is not necessary as a prime mover or as an explanation. (This is dealt with below and in chapter 4.) Christianity, however, is another matter.

Islam and Christianity

The difference between Christianity and deviant Islam is that the latter shares in the Revelation granted to the Prophet Muhammad, whereas Christianity

denies it. Whatever the differences within Islam, all factions share the Qur'ān. Christianity denies the Qur'ān as just not true or, in the extreme view, classes it as a heretical Christianity. In its Catholic and Protestant form Christianity has a long history in Indonesia, but from the Muslim point of view that history is tainted by its colonial origins. It has been and is still seen as a device through which 'the West' attempts to impose itself. At a more subtle level it is often regarded as an aperture through which a sort of creeping secularism can become effective in state legal policy. The obvious example is inter-religious marriage,[217] but attendance at Christian ritual is also a difficult issue because it may signify belief in the other theology. Some representative examples, also involving other matters as well as Christianity, illustrate for us the boundaries between Islam and not-Islam.

In an early *fatwā*, Persis[218] considered the question of whether it was permissible to read the Qur'ān and pray in the house of a non-Muslim Chinese. It is permissible provided the purpose is to teach and advise the non-Muslim so that he or she may be encouraged to enter Islam. If, however, the purpose is to read so that one receives a blessing for oneself, then it is a 'waste of time'. To pray for an unbeliever is forbidden, although one may pray to God to encourage a non-believer to enter Islam. So far as prayers are concerned, the same approach can be found in a Muhammadiyah *jawab*,[219] where prayers for one's non-Muslim parents/relatives are permitted. But the object of the prayers must be to ask God to guide them. The authority is S IX:84 and 113. On the other hand, a visit of condolence to a non-Muslim family is permitted but prayers are not.

On the wider question of general social contact with non-Muslims, there are varying emphases. Both Persis and Muhammadiyah[220] agree that in answering greetings from a non-Muslim one must avoid a response reserved for Muslims—in this case to say *alaikum* ('on you') only. Both cite the same *ḥadīh* from Muslim. The Muhammadiyah has devoted considerable attention to Muslim relations with non-Muslims. The general principle, set out in 1990, gives three Qur'ānic references:[221] S XLIX:13 is cited in part, the passage '. . . We created you . . . and made you into Nations and Tribes . . .'. S VI:105, 'Revile not those whom they call upon, lest they out of spite revile God . . .'; and S XXIX:46, 'And dispute you not with People of the Book'. Each passage is followed by a short note elaborating on the selected passage. This opinion is immediately followed by another[222] specifically on '*toleransi bergaulan*' (tolerance of association). Part of one verse only is cited. This is from S V:6, '. . . The food of the people of the Book is lawful and yours is lawful unto them'.[223] The commentary in this passage identifies unlawful food (pork) and gives examples of lawful food (rice, beef etc.). A further comment is that blood donation between Muslim and non-Muslim is allowable in cases of emergency. However, a Muslim woman may not marry a non-Muslim. Similarly, a Muslim man must avoid (*wājib dihindari*) marriage with a non-Muslim woman. We return to this latter point shortly.

There are three final examples, all concerning children, which again illustrate the boundary between Islam and not-Islam. An early NU *fatwā*[224] of 1938 concerns the validity of advice given by a male Muslim parent to his two children, one Muslim and one Christian. The advice is that each must remain in his own religion. The NU committee decided that the advice is meaningless and without purpose. However, it also goes on to say that if these facts are true and the father fully intends it, then he has become an apostate. A short passage from *Bugyatul Mustarsyidin* is cited but appears not to have any bearing on the question. In contrast, the two Persis *fatāwā*[225] are concerned with the fate of non-Muslim children after death—do they go to heaven and may they be buried in a Muslim burial ground? The answer in both cases is yes, and the reasoning is that every child is born pure (i.e. Muslim) and it is the parents who make it into a Jew, a Christian or a Zoroastrian. This happens when they come of age. Thus, a child of non-believers raised by Muslims is a Muslim child. To quote from *fatwā* No. 594:

> Our view is based on a similar *ḥadith* where the Prophet says that all children are born holy and that it is their parents who turn them into Christians or Jews etc. (HSR Bukhari and Muslim) Therefore he does not distinguish between Muslim and non-Muslim children. This view is strengthened by another *ḥadith* where the Prophet, in response to a question, specifically clarifies that the children of non-believers are also born pure and holy. (HR Abu Bakar al-Barqani) On another occasion, when asked who was in heaven, the Prophet said—the Prophet, martyrs and children. (HHR Ahmad) He said this without distinguishing between Muslim children and the children of others.

Marriage with Christians

The Muhammadiyah begins by defining non-Muslims as either pagans or *ahli kitāb* (S XCVIII:1). The former are absolutely forbidden and must convert (S II:22). The *ahli kitāb* are believers in *Injil* (the New Testament) or *Kitab Taurat* (Torah), but both are corrupted versions of God's message.[226] An important point raised by Muhammadiyah is the difficulty of deciding just who is or is not a member of the *ahli al-kitab*.[227] Given the variety of Christian groups worldwide and represented to some extent in Indonesia, this is an important factor. Combined with this, the Muhammadiyah takes the position[228] that an act which is *mubāḥ* (permissible) may be prohibited to avoid a (greater harm) '*haram mafsudah*'. This is a basic proposition in the Muhammadiyah definition of the purpose of Syariah. The argument is as follows. The Qur'ān (S V:5) allows the marriage of a Muslim man and a woman of the *ahl al-kitab*—that is, a Jewish or Christian woman of a persuasion that existed before the Prophet Muhammed received the Revelation. However, the Muhammadiyah here apply the idea of general context. At the time of the Prophet such marriages were allowable because the circumstances of time and place would make it inevitable that the woman would become a Muslim. This is not the experience in contemporary Indonesia, where the opposite may occur. Even if it does not,

the religion of the children tends to be that of the mother. In either case, the preservation of religion and of the Muslim family is threatened. Applying the principle of *sadd al-Dharā'iʿ* (stopping the means) becomes necessary, so that *mubāḥ* becomes *ḥarām* and such marriages are forbidden. Similarly, a non-Muslim who becomes a Muslim can no longer follow a non-Muslim law. This proposition[229] is explained with reference to marriage (S II:221) and is to the same effect as the decision just outlined. These two *jawab* are excellent examples of the Muhammadiyah method that context must determine the application of a rule and hence the classification of action. It is argument from circumstance rather than from a given principle. Circumstance determines the results; the classes *mubāḥ*, *makrūh* and *ḥarām* are then called in as justifiers. Of course, in strict theory it should be the opposite. However, this happens in all legal systems.

The NU by contrast has little analysis. In 1960 a *fatwā*[230] repeated the well-known rule that a Muslim man might marry a *khitabiyya*—that is, a female Christian or Jewess whose ancestors had entered their respective religions before the Prophethood of Muhammad. The source cited is *kitab 'Asy-Syarqawi*' II/237.[231] However, in 1989 a *fatwā*[232] decided the exact opposite, prohibiting interreligious marriage using *exactly the same source of authority* (plus some others). The *fatwā* also referred to previous NU decisions in 1962 and 1968. There is no argument as such from the cited sources: we merely have extracts that do not advance any position. This is in sharp contrast to the Muhammadiyah *jawab* and in even sharper contrast to a MUI *fatwā*[233] on the subject given in 1980. The context of this *fatwā* is the debates around the Indonesian Marriage Law of 1974. From the Muslim point of view the draft bill represented an attack on the principles of religion. For example, validity of marriage was made contingent on registration alone, marriage between persons of different religions was to be permitted, and permission for divorce was required from the secular courts. While those provisions contrary to Syariah were eventually deleted in the final 1974 law, it is still true that the Marriage Law must be an element in the interreligious marriage debate. The MUI *fatwā* of 1980 consists of four citations from Qur'ān and two *aḥādīth*. The former are: S II:221, 'You shall not wed pagan women unless they embrace the faith . . .'; S V:5, 'Lawful to you are believing women . . .'; S LX:10, 'If you find them true believers do not return them to the infidel . . .'; S LXVI:6, 'Believers guard yourselves and guard your kindred . . .'. The first *ḥadīth* is from Thabrani, 'He who has married has already upheld half his faith' and the second from Aswad bin Surai', 'Every child is born into a state of purity [*fiṭra,* i.e. Islam] his parents determine whether he is Jewish, Christian or Parsi'. The conclusion drawn from these citations was that not only was a Muslim woman forbidden to marry a non-Muslim man—a known principled position—but a Muslim man might not marry a woman of the *ahli al-kitab,* although this actually is permitted. The ground is that the possible harm (*mafsada*) to religion, Muslim society and children is greater than any benefit (*maṣlaḥa*) to the

individuals involved. The *fatwā*, therefore, reflects the public debates[234] of the 1970s, in particular those surrounding the Marriage Law of 1974 and the place of the state in determining the application of *fiqh* in contemporary Indonesia. This last is the crucial issue in assessing this *fatwā*.

The state factor can best be illustrated in a series of letters dating from the mid-1980s from the MUI-DKI to various institutions of state. (The MUI-DKI is the First Level MUI for Jakarta.) The letters[235] are as follows.

1. From MUI-DKI Letter to Governor of Jakarta, 19 July 1986:

> In the light of reports in the mass media and questions from the Muslim community regarding inter-religious marriages when one of the parties is a Muslim and the marriage is registered through the Civil Registry Office of Jakarta, permit us to avert to the teachings of Islam. These state that a Muslim (male or female) intending to marry is bound by the provisions of Islamic law as provided by the Qur'an and Sunnah. For this reason, the marriage must be performed by a Muslim. This is in accordance with the provisions of Act No 1 of 1974 regarding marriage, section 2, sub sections 1 and 2, together with their elucidations thereof as well as section 8F.
>
> In implementing the provisions of the Marriage Law and the teachings of Islam in accordance with the content, substance and spirit of the Pancasila and P4 (Guidelines for the Nurturing and Implementation of Pancasila) we request the Governor to instruct the Civil registry office to discontinue performing or registering marriages of Muslims, because under Presidential decision No 12 of 1983 the Civil Registry Office only has authority to register marriages between non-Muslims.

2. From MUI-DKI Letter to the High Court Jakarta 19 July 1986:

> The letter notes the widely reported marriage of Jamal Mirdad (a Muslim) and Lidya Kandou (a Protestant) and their request for marriage to the South Jakarta Court. The Court held:
> (1) Permission should be granted to the couple to marry in a Civil registry office.
> (2) An inter-religious marriage does not constitute a mixed marriage.
> (3) Difference in religion does not constitute an obstacle to marriage.
>
> The letter then repeats the opinion expressed in the letter to the Governor of Jakarta that every marriage must be performed in accordance with the Marriage Law of 1974 as 'this represents the national law'.
>
> The letter is copied to the Chairman of the Supreme court, the Minister of Religion, the Governor of Jakarta, the Chairman of MUI and the Head of the Jakarta Regional Office of the Department of Religion.

3. Letter to the Governor of Jakarta in the name of the Minister for Religion by the Director General of the Council for the Development of the Organs of Islamic Justice 3rd September 1986. The letter refers to the earlier MUI letter (above) of 19 July 1986 and notes:

> (1) A Muslim (male or female) is bound by the laws of Islam which are based, amongst other things upon:

(a) Allah's directive in S II:221 that a Muslim man is prohibited from marrying a pagan woman and a Muslim woman is prohibited from marrying a pagan man.
(b) Allah's directive in S V:5 that a Muslim man may marry a woman who believes (a woman of the book).
(c) Allah's directive in S LX:10, that a Muslim woman is forbidden from marrying a man who is not Muslim.
(2) The Consensus of Muslim scholars is that a Muslim woman is forbidden from taking a husband who is not Muslim.
(3) The legal provisions which provide that marriage is valid when performed in accordance with religious law and the beliefs of the individual and every marriage must be registered in accordance with the law (Act No 1 of 1974 sections 2(1) and (2)).
(4) The registration of marriages by the person performing the marriage in accordance with Islamic law must be done by determination of a state court (Government regulation No 9/1975 section 2(1)).
(5) Because of this we share the opinion of the MUI [Jakarta] that the Civil Registry Office has no authority to register the marriages of Muslims (Government regulation No 9/1975 paragraph 2(2) in conjunction with Presidential Decision No 12/1983).
(6) The fatwa of the State Court which has recently formed the basis for the registration of the marriages of Muslims by the Civil Registry Office is incorrect as it conflicts with Act No 1 of 1974, Government regulation No 9 of 1975 and Presidential Decision No 12 of 1983.

4. Letter from the Governor of Jakarta to the Minister for Coordination of People's Prosperity:

Regarding a request for guidance on the issue of the registration of inter-religious marriages 7th October 1986. Notes that the problem is not clearly regulated by the Marriage Law of 1974 while the incidence of inter-religious marriage is increasing.

As an interim measure the issue has been handled by recourse to Western civil law through notaries or through a determination of the State Court in order that the marriage may be registered in a Civil Registry Office.

This was done merely so that the Government could continue to provide marriage services in a manner acceptable to all parties.

However, the system was unacceptable to MUI Jakarta, the Jakarta regional Office of the Department of Religion and the Director of the council for development of the Organs of Islamic Justice in the Department of religion writing in the name of the Minister for Religion.

The Governor notes that he has already requested guidance from the Minister for the Judiciary and the Minister for Internal Affairs but none had been received. The Civil Registry Office of Jakarta had secured an agreement with the relevant parties that:
(a) Marriages between a Muslim and non-Muslim woman were to be registered in the Office for Religious Affairs on the basis that no civil registry office would provide that service.
(b) Marriages between non-Muslim men and Muslim women could be

registered in the Civil Registry Office of the Province of Jakarta Special Region after securing a determination from a State court.

These four letters give us a context for the *fatwā*. Those involved include the Governor of Jakarta, the High Court, the Ministry of Religion, the Ministry of Coordination, as well as the MUI. The ideology of the time, Pancasila and its accompanying regulations, is also a factor, as is the Marriage Law of 1974. Finally, and equally important to the individual, we have the bureaucracy that issues a marriage certificate. Without the appropriate document one does not have the status of 'married'. Each of the various bodies has its own law and procedure. Perhaps the most important feature is the amount of cross-referencing in the correspondence, with particular attention directed to the Marriage Law. It is this Law, combined with the bureaucratic practice of the registries, which determines the issue.

It is clear that 'Muslim-Christian' is not only a matter of doctrine in modern Indonesia. A *fatwā*, while given from the internal Islamic position as to reasoning, cannot be judged solely from that position. The range of other positions, demonstrated in the correspondence, must be taken into account. The MUI-DKI in fact went on to summarise the issue.[236] It recommended: that interreligious marriage be avoided by a man unless there is some compelling reason to marry (e.g. living in a non-Muslim society); if he does marry a Christian, the marriage must be performed in accordance with *Syariah* in the Muslim registry; a Muslim woman may not marry a non-Muslim man; the Muslim community is recommended to avoid marriage with non-Muslims; all marriages must be in accordance with Pancasila, the Constitution and the Marriage Law of 1974.

We are a long way now from the 1980 MUI *fatwā*. The key to that *fatwā* is *maṣālīḥ al-mursala*, the wellbeing/interest of the Muslim community, and for this reason interreligious marriage, whether involving a Muslim male or female, is to be severely discouraged. In practice, it is almost certainly impossible, simply because a mixed marriage registration on the Muslim register will be refused. It is ironic that now doctrine falls to be applied (or not) by bureaucratic fiat. The 1980 *fatwā* is itself quite strained in its reasoning, and the correspondence just cited is not really helpful from the doctrine point of view. However, it does state very clearly the dilemma a *fatwā* committee faces in defending doctrine in the context of the nation-state. The state is threatening, not just for Indonesian Islam but generally in the Muslim world.

Muslims and Christian ritual

This is also a public affair so far as doctrine is concerned. It concerns the presence of Muslims at Christian ritual—that is, a ceremony in which Christian dogma is central and where prayer is recited. May a Muslim attend? Does public attendance imply deviance, is it even permissible? These questions go back to fundamental differences in theology. While the prophethood

of Jesus is not denied (S XIX:30–32, V:75, II:285), to accept that God had a son or that Jesus is the son of God is to be both *kāfir* and *mushrik*. Thus:

> S IX:30–'. . . the Christians
> Call Christ the son of God
> . . . they but imitate
> What the Unbelievers of old
> Used to say; God's curse
> Be on them . . . they are deluded
> Away from the Truth.'

An example that encapsulates the issue is in an MUI *fatwā*[237] from 1981 on Muslim attendance at Christian services, especially at Christmas, the commemoration of the birth of Jesus. The *fatwā* cites seven *āyāt*: S XLIX:13, '. . . We made you into tribes and nations'; S XXXI:15, '. . . if they strive . . . obey them not . . .'; S LX:18, 'God forbids you not . . . with those who fight you . . .'; S CIX:16, 'I will not worship that which you have been used to worship . . .'; SII:42, 'And cover not truth with falsehood.' Perhaps the most important direct references by MUI are to S V:72, S IX:30 and S V:116–118 which, read together, are evidence that not only is Jesus (Īṣā al-Masīh) not the son of God but that he, as a Prophet, specifically disclaimed it. The argument is from Revelation and, given that premise, the MUI reasoning is perfectly consistent. The result, that Muslims might not attend Christian ritual, could not have been otherwise. The one *hadīth* cited,[238] from Nuʾmān Bashīr, distinguishes *ḥarām* and *ḥalāl* and also recommends avoidance of unclear circumstances. Finally, the avoidance of harm (*mafsadah*) must take priority over any supposed public benefit (*maṣlaḥa*). As Professor Mudzhar points out,[239] this is an inconvenient result from the point of view of the state. The official policy of the latter is the promotion of religious harmony, and if this requires the presence of a Muslim in some official capacity at Christian ritual, then so be it. However, even a moment's thought will show that this begs the question: how does one separate a theological premise from a 'service'? The Ministry of Religion did in fact try to do this in a *Surat Edaran* (Circular Letter) in September 1981.[240] The attempt was and is unconvincing; essentially such a distinction is doctrinally impossible. A state-sponsored 'tolerance' along such lines is a logical incoherence and, while its intention might be to encourage inter-religious harmony, it is just as likely to result in the opposite.

Ten years later, in 1992, the Muhammadiyah faced exactly the same issue.[241] Not only did it take the same line, it cited and copied exactly the MUI *fatwā* of ten years earlier. It made no addition to or subtraction from the MUI reasoning. This is not surprising because the reasoning is pure Muhammadiyah.

There are only two more *fatāwā* of interest here, both from Muhammadiyah. The first:[242] can a Muslim pray for the deceased parents of a Christian? The answer is unclear, but probably in the negative. To be

permissible one would have to overcome S IX:113 and 84, both of which directly forbid the practice, even for kin. The Majlis Tarjih temporises somewhat by saying that the matter will be considered 'later'. It is difficult, however, to see what can be done. The *sūra* are quite clear. The second *fatwā*[243] decides the question of whether a Muslim might properly pay a visit of condolence to a non-Muslim family. Such visits are permissible, provided no ritual element is involved.

With the last two examples we conclude our introduction to doctrine considered as a specific subject. Already we can see that the setting of doctrinal boundaries can be rather complex. Perhaps we can distinguish (a) an internal boundary within Islam and (b) the external boundary with Christianity. However, we can say that the method of reasoning is the same in both cases. Neither case can be distinguished on this basis, and this is important because it demonstrates that such classes as 'traditionalist', 'modernist', have virtually no meaning in the real world of the *fatāwā*. We continue this issue—knowing Islam—below.

THE REPRESENTATION OF ISLAM

An icon is a representation of the sacred and, as such, is forbidden in Islam. This has not, however, prevented representations of the sacred being made in the form of films, songs, radio broadcasts, and even clothing and cloth in Indonesia. This is another boundary and, in its own way, it is a major threat to the purity of doctrine. A representation implies that the value of Revelation is not an absolute but can be mediated through some form or other. The sacred, therefore, can be used and even exploited in the secular world, sometimes for profit. The new media is a fertile field for such use, and has been for the past 50 years or so. For Islam this is essentially tied to the question of 'image' and 'representation', which is of course absolutely forbidden. But media is about image, it *is* image, and hence the quite understandable Indonesian Muslim caution as to any image. Given this context, the examples of *fatāwā* that follow are perfectly understandable. There is a necessity to control image and image-making because Revelation forbids it. But there are, perhaps, acceptable images: is an aural image good but a pictorial one bad? and what is 'pictorial'? What are the permissible limits for representations in Indonesian Islam?

We have answers from each of Persis, NU, Muhammadiyah and MUI. Between them, the respective *fatāwā* give us a spectrum of responses in varying degrees of sophistication. By 'sophistication' I do not mean anything especially complicated ('sophistry'), just to indicate that a degree of artificiality in reasoning is nevertheless present. We can best begin with one of Ahmad Hassan's (Persis) *fatwā*[244] on representations (pictures, images, statues)

He distinguishes five possible views. The first holds that any representation is absolutely forbidden. This view is supported by eight *aḥādīth* (Bukharī and Muslim) which, while they forbid the making or storing of images, are

not interpreted by Ahmad Hassan as outright prohibitions. In his analysis he distinguishes between representations depending on the purpose for which they are made. If the purpose is worship or acceptance of another religion (e.g. Christianity), then they are obviously forbidden. But the Prophet himself permitted representation, and Ahmad Hassan cites the eighth *ḥadīth* from Bukharī which relates how the Prophet ordered a screen be moved because it was disturbing his prayer. In other words, not all representation is forbidden. The second view considered by Ahmad is that, while statues are forbidden, representations on cloth or material are permitted. The justification is a *ḥadīth* from Zaid bin Khalid. Again, Ahmad rejects the account, doubting that it came from the Prophet himself. The key, for Ahmad, is whether the purpose is worship. The third view says that representations used for decoration are forbidden, while those walked on, sat on or leant on are not. The authority here is based on several *aḥādīth* from ʿĀʾisya, which report her making cloth cushions. The former may lead to an undue admiration—that is, that a decorative representation may lead to worship of some degree. Ahmad has some sympathy for this view, but he is not willing to concede that a difference of function is sufficient on its own. He comes back again to the question of worship. His further comment is that the *aḥādīth* cited (ʿĀʾisya reported in Bukhārī) were directed towards representations that might actually be worshipped given the prevalence of idol worship at the time. His focus, then, is on the nature of the representation and whether or not it has the quality of attracting worship in the contemporary world. The fourth view, which he also rejects, says that only representations of creatures with consciousness (humans, animals, angels) are forbidden. Representations of inanimate objects (mountains, the sun) are permitted. The argument is that worship requires that the object worshipped is in some sense a mirror of a living thing. Ahmad rejects this on the basis of *aḥādīth* from Bukhārī and Muslim, which forbid all such worship whether of living or non-living objects. He points out also that many people do in fact worship inanimate objects.

His own view is that representation is forbidden when there is a possibility of worship arising. As he says:

> **Some Important Questions**
> A: There are those that say that picture on paper and the like are alright. It is only statues that are three dimensional (that is, which throw a shadow) which are forbidden. Is that true?
> B: No, that is not true. If it were the Prophet would have not pulled down the screens with pictures on them. He also would not have allowed Aisyah to play with dolls.
> A: Who should we be afraid might be worshipped?
> B: Those people who normally become the subject of worship are the Prophets, the virtuous and religious leaders. It was on this basis that in one *hadith* the Prophet condemned the practice of some Christians which involved making a place of prayer above the grave of certain virtuous people and placing pictures there.

A: If pictures or a statue is forbidden, is it only forbidden for us to display it in our house, or is it also forbidden just for us to have it there?
B: As for pictures which might become the subject of worship, the *hadith* show that it is alright for us to have them in our homes provided they are not in a place which will easily catch people's attention. As for pictures which are the subject of worship, they cannot be seen in any circumstance, even if they are broken or faded etc.
A: What is the law on making pictures or statues?
B: There are three laws:

1. It is not forbidden to make something that is allowed to be seen in our house. It cannot be forbidden to make something that it is halal for us to use.
2. It is forbidden to make something which might become the subject of worship. The *hadith* tell us that those who do will be punished.
3. Of course, if it is forbidden to make something which might be worshipped it is certainly forbidden to make something which certainly is the subject of worship.

A Few Points That Strengthen Our Position

1. In the *hadith* where the Prophet criticises the Christians for making pictures of the virtuous (Saints) and placing the pictures above their graves, he does not criticise them for making pictures of their Kings and war heroes which was a common practice at the time. At that time, the people most likely to become the subject of worship were the Saints and other wise men, so it makes sense it was their pictures that attracted the Prophet's condemnation.
2. In one *hadith* the Prophet says that those who make pictures will receive the severest punishment. The punishment is normally reserved for non-believers. If it is directed at Muslims, then it must be a sin almost like apostasy. Those artists who might be considered like apostates can be no other than those who make pictures or statues for worship.
3. In several *hadith*, Aisyah makes cushions with the screens the Prophet has torn down. She doesn't ask him first and he uses them without comment. From this it is clear that what Aisyah thinks the reason for a picture being forbidden is that it might be worshipped. If it were forbidden without such a reason, it is clear that she would not think that it became halal simply by turning it into a pillow.

This general approach is also characteristic of the Muhammadiyah discussion of pictures and music. The issue has been discussed twice in the 1990s. The later discussion[245] begins from the proposition that Muhammadiyah does not prohibit representation or music as such. The test is whether they are in accordance with Islamic principles. So far as pictures are concerned, these are: if a picture is intended for worship it is *ḥarām*, if for instruction or education it is *mubāḥ*, if for decoration it is permissible provided it does not lead to temptation, in which case it is *ḥarām*. The conclusions reached are a slightly elaborated version of an earlier ruling which even extended to hanging portraits of the founder of Muhammadiyah, K.H. Ahmad Dahlan,

though this ruling was later reversed[246] on the grounds that the purpose is not worship but educational or informational.

In the use of musical instruments the same reasoning is applied.[247] It is *mubāḥ* to build up courage in a suitable cause (not defined), but as a support for disobedience (again not defined) it is *ḥarām*. The general position is that it should be avoided as an action which is doubtful in its effect.

So far we have been discussing rather static representations, but if we turn now to NU *fatāwā* we can see illustrated the problems with the new media, particularly from the 1930s onwards. As is to be expected, representations of Islam in the obvious sense of the pictorial find no favour with the NU. In 1926, for example, drawings of animals[248] and, in 1936, photographing animals[249] was held to be reprehensible. There is a footnote to this decision which reports a later NU Congress—number XXIII—as reversing this decision. The action is permissible. The only source cited is the journal *Nurul Islam* (10:1), but this source does not give a *fiqh* authority. This *fatwā* obviously caused difficulty because the issue was raised again in the later Congress of 1939. Here, the new *fatwā*[250] repeated the earlier decision, although in this instance the question was not the propriety of a photograph but an animal shape to be used as a seal or a sign as in a notice board. The same answer was given but this time supported by citations from two texts, one easy to trace but the other obscure.[251]

Actual visual representations of Islamic doctrine, as for example in a play, must be approached with great care. It is better that such activity be avoided because the danger of wrongdoing is ever-present.[252] Similarly, manufacturing prayer mats inscribed with sentences about God cannot be approved because the mats and hence the texts will be degraded through use as a floor covering.[253]

On the related issue of Islamic elements in broadcasting, there are a number of decisions reported. In 1935 the question was approached with considerable caution.[254] Generally, it is permissible to listen to the radio and to make recordings of Islamic material provided the latter is orthodox in nature. The authority cited here was a former Muftī of Egypt (Muhammad Bakhīt,) published in the *'Majallah El-Hidyatul Islamiyah*' of August 1933. There was a more elaborate discussion of the same issue in the Congress of 1939. In a *fatwā* of that year[255] the following conditions were laid down. First, the reader must sit in a ritually clean place and all the required conditions for a proper recitation must be fulfilled. These are not given in detail. If these conditions are met, then listening is permitted. It is permissible even if the listener is in an inappropriate place (not specified) providing the preceding conditions are satisfied: 'it is the true Qur'ān which is heard'. The authority is a passage cited from *'Majallah Al-Azhar*', undated and unsigned, but emphasising the necessity of following the rules of *tajwīd* in the recitation (see below on Qur'ānic verse in popular song).

These *fatāwā* were referred to in a further example, this time from 1961. The *fatwā*[256] here says where the radio speaker's greeting includes the

words '*Assalam Alaikum*', then it should be responded to because it is a live voice. If, however, the greeting is on tape or record, then there is no need for the response because of a lapse of time. The final published NU *fatwā,*[257] from 1979, is specifically on records or cassettes of the Qur'ān. May such be made, are they copies? To take the latter first: a recording is not a copy in the strict sense. We know that there is only one authentic text of the Qur'ān made at the time of Caliph ʿUthmān by Zayid b. Thabit, the writer to the Prophet. Revelation is in Arabic, so that any translation or commentary cannot be part of the Qur'ān. The issue for the NU, therefore, was whether a recording was a copy, amounting to or approaching unacceptable translation. It was decided that it was not a copy in the sense of commentary or translation. The question is authority; 'commentary' and 'translation' were defined in terms of *fiqh* texts, in this case found in Sayyid Bakrī's (decd 1893) *Īʿnāt aṭ-ṭālibīn*,[258] and from the citation it just repeats the standard approach to translation. However, the reference is important, taking us back as it does to al-Malībārī's *Fatḥ al-muʾīn*—in other words to the classical definitions of translation. However, this does not dispose of the idea of a recording, which is a voice representation. Here the *fatwā* is problematic. It puts two possibilities: the first is that the *ilm al-tajwīd* is uncertain; second, the sound from a cassette is not in itself a 'real' (i.e. from the human) sound but emanates from an inanimate object. By definition, it cannot 'be' Qur'ān, but it is permitted to listen to it. There is no firm decision but the general tenor is against the practice of recording. The very inconclusiveness of this *fatwā* indicates a real problem in the epistemology of representation, but at least it is raised for discussion.

The Muhammadiyah, on the other hand, give us a *jawab* which is minimalist on the subject.[259] The Qur'ān must be read by *ilm al-tajwīd* (citing Abu Dāwūd and Ahmad). Presumably a correct rendition in cassette form would be permitted? In 1983 the MUI issued a *fatwā*[260] restating the same position, but this time in the framework of Qur'ānic verses used in popular songs as phrases or parts of phrases. The practice is forbidden and the authority cited is equally minimalist—S XXXVI:69, 'We have not instructed the Prophet in poetry . . .,' and LXXIII:4, '. . . recite the Qur'ān in measured tones . . .'. In short, the *ilm al-tajwīd* must apply, and these rules must also forbid Qur'ānic recitation in ephemeral popular music, however attractive this might appear at the time.

We are now in a position to return to the earlier issue of representation in pictures, in this case in the new medium of moving pictures. A film has a plot, characters, music and (supposedly) tells a story. It may or may not attempt a moral message and it may be for amusement and/or an instruction or ideological purpose. Due to wide circulation, films are always a matter of state concern, hence censorship, and when a film is about or refers to religion the matter is the politics of religion. This brings us to two *fatāwā* from the 1970s and 80s.

The first,[261] in 1978, from MUI concerned a film entitled 'The Message',

which purported to show the early struggles of Islam. The main issue was whether there was any portrayal of the Prophet: the film did not in fact do this. On this ground it was permitted. The interesting feature is that the 1978 *fatwā* cited no authority at all. However, in 1988 the issue arose again, this time in connection to a film entitled '*Adam dan Hawa*' (Adam and Eve) and a second much more elaborate *fatwā*[262] was issued. In this case the *fatwā* began by stating (a) that the portrayal of the Prophets and their families is forbidden and (b) that to avoid misunderstanding about the Prophet Muhammad there is no justification for portraying him as a glowing radiance or light. The reasoning that followed is based on *aḥādīth*, not identified in the *fatwā* but certainly from al-Bukhārī and al-ʿAsqalānī,[263] the well known passages relating to prohibitions on images. There is also a reference to the consensus of opinion among scholars that printing or portraying the Prophets is not permitted. Finally, the principle of 'Sadd az-Zariah' (*sadd Al-Dharā'iʿ*—blocking the means) was invoked to forbid acts that may be conducive to impurity of doctrine.

This *fatwā* is comprehensive as to sources of reasoning: we have *ḥadīth*, *taqlīd* and *sadd Al-Dharā'iʿ,* and this is typical of MUI practice. An interesting feature is that there is argument in the Shāfiʿī *madhhab* over whether the principle of 'blocking the means' is in fact a principle of jurisprudence in its own right, but this was not discussed in the MUI *fatwā*. This may appear a minor point but, as we shall see (chapters 4 and 5), there is a tendency in Indonesian *fatāwā* to push the principle to controversial lengths.

CONCLUDING REMARKS

While it is far too early to attempt a comprehensive conclusion on the characteristics of Indonesian *fatāwā*, some preliminary comment on how we know Indonesian Islam might be useful. It is clear that the 21st-century context for Indonesian *fatāwā* is the secular state. The *fatāwā* now constitute an important form of dialogue between the state and the truths of Revelation. They are an ethos of accommodation where boundaries of doctrine and representation are debated. This is true for each of the methods of Persis, Muhammadiyah, NU and MUI. The result has been a rediscovery of *maṣlaḥa* and *sadd Al-Dharā'iʿ* or, more exactly, their promotion to become basic classes in jurisprudence. The limits of this promotion are debated in *ijtihād*, *taqlīd* or, in the case of MUI, in a combination of both.

What emerges is a radical reorganisation of classes in Syariah. If we accept the view that method is primary in Syariah, as it is in all legal systems, then the *fatāwā* cited here show us that the hitherto opposing methods, *ijtihād* and *taqlīd*, are not now really opposites in the contemporary Indonesian context. The *fatāwā* do seem to demonstrate this in the sense that the neutral class—permissible (*mubāḥ*)—has now become highly charged, especially with reference to *maṣlaḥa* as a source. The following chapters expand this argument.

2

The individual and religious duty

At the end of chapter 1 it was suggested that the permissible—*mubāḥ*—has become highly charged in modern Indonesian Islam. The intention of this chapter is to try and give some meaning to 'highly charged' by taking *fatāwā* on the Five Pillars of Islam. These are the essential religious duties which the individual is obliged to perform. In terms of dogmatics they constitute an irreducible minimum, and are the same throughout the Muslim world. This does not mean to say that time and place (20th/21st century Indonesia) are without consequence. Indonesian *fatāwā* collections devote considerable space to the Pillars. While much of the discussion is didactic, as well as being concerned with purity of basic doctrine, a significant number are responses to the extensive political and social changes of the past 70 or so years.

At the personal level, the stage on which the individual Muslim now performs his or her obligations, does his or her duty, is constantly shifting. While the Pillars are in no sense problematic, nevertheless there is a change-induced tension between the requirements of dogma and the realities of its practice. What are the possibilities and limits of the permissible in the contemporary nation-state with its pervasive (sometimes invasive) institutions, practices and, in the Indonesian case, a competing national ideology (Pancasila)? The answer or answers are personal to the individual, who must ultimately bear the consequences of action. From the individual's position it is essential to know the outer limits of the permissible and somehow act within them despite the practical difficulties of contemporary life. I do not suggest that this has not been an issue in the past histories of Muslim societies—of course it has. As Dr Walther Braune said[264] some 30 years ago, '. . . the human reception of the divine revelation is evidently for Islam the most difficult problem'. He is speaking here of the complexities of urban life, but the same remark can apply to Indonesia, where it includes colonialism, war, revolution, the creation of a new state and a new

state ideology, and secularism as facts of daily life. In short, the absolute certainty of the Pillars can only be sought and, one hopes, realised in the context of these new and rather overwhelming complexities.

SYAHĀDA(T)

Literally meaning 'to witness',[265] in dogma to affirm that there is but one God, as in the phrase 'There is no god but God; Muhammad is the Prophet of God'. It is often referred to as the 'Confession of Faith' and is the only one of the Pillars about which legal uncertainty does not arise. No Muslim either disputes it or misunderstands it except, as we saw in chapter 1, in the context of unacceptable sects, where the issue is heresy. As a consequence there are very few *fatāwā* in the sources, but we do have three examples, each of which raises an important issue.

The first two, one from the NU[266] and one from Muhammadiyah,[267] investigate the phrase as it concerns non-Muslims attempting to convert to Islam; conversion requires the Confession of Faith. In the NU case, the proponent recited only the first part: 'There is no god but God . . .', omitting the Prophethood of Muhammad. The conversion was invalid because the Confession is incomplete. The authority cited is Malībārī's *Fatḥ al-Muʾīn* in the Arabic, although there are both Indonesian and Javanese translations. Obviously, the part cannot be taken for the whole, but the interesting point is that the authority cited is (a) a major textbook and (b) in Arabic. The Muhammadiyah, on the other hand, while agreeing that a full Confession of faith is necessary, also require that the convert carry out all duties of a Muslim (prayer, the fast and so on). Here conversion is obviously not just a matter of repeating ritual words: these must be demonstrated to be truly meant by later acts. The conversion for convenience (e.g. marriage) by means of a rote repetition is not sufficient for it to be permissible. While the Muhammadiyah *jawab* is not spelled out precisely in 'permissible' terms, its *aḥādīth* authority (from Bukhārī and Muslim) strongly suggest that such is its basic reasoning. In short, faith[268] must be demonstrated by actions of the individual. This is not 'faith and works' but instead evidence of true intention.

The third *fatwā*, from the NU,[269] raises the issue of innovation, at least from a strict literalist point of view. May an individual add a phrase to the Confession of Faith, the phrase in the question here being the addition of the words '*Abdul Qodir Walliyaullah*'. The addition translates the Confession into *zikir* (*Ar dhikr*), the repetition of a formula in praise of God. This is always a controversial matter. In this instance, the NU gave two opinions without citing any authority: the first, that the practice was permitted provided the addition was after the Confession and not inserted within it; the second, that the practice was not permitted. There is no argument, just the two alternatives. Essentially, we have motive or intention added to, or in addition to the Confession. Is the Confession thus 'usable'?

To introduce the idea of 'use' in this context can be supported by other *fatāwā*. For example, in 1961 the NU[270] was prepared to accept that the visiting (*ziarah*) of graves of great deceased '*ulāmā*' and reciting the Confession of faith was permissible. The practice of *ziarah* is controversial[271] but, whatever the outcome in the future, intention as it relates to the Confession cannot be excluded in our understanding of this Pillar in `Indonesian Islam. Another example of intention and use can be found in one of Ahmad Hassan's *fatāwā*[272] on *bidʿa,* in which he indirectly discusses the Confession of Faith. While repeating that its recitation is good, he holds that common practices such as counting, using an imām and reciting in unison are *bidʿa*. The reason is that such are innovations in *ʿibādāt* and, for this reason, cannot be permitted. The real thrust of his argument is that the Confession is being used for some purpose, and *use as such* is not its true function in *ʿibādāt*. He does not deny innovation in non-*ʿibādāt* matters, but in such a fundamental as the Confession it is not permitted.

These examples bring us to the second Pillar, prayer, a huge subject and one with which all the Indonesian *fatāwā* sources deal in detail.

SHALAT (ṢALĀT)

In theory, prayer permeates the life of a Muslim, with five daily prayers and the communal Friday prayer being required of each person. The theory is a long way from practice in Indonesia as elsewhere in the Muslim world, but prayer itself is the subject of intense interest in the Muslim community. This is reflected in the *fatāwā*.

It is difficult to know where to begin; the numbers alone threaten to be quite overwhelming (see Appendix). However, the majority are clear and simple in answers to obvious questions: how does one pray, when, where, and what are special prayers? These questions are dealt with in detail in most sources, although there is a wide variation in emphasis. For example, the MUI has only one public *fatwā* on prayer (see below), while more than half the collections of Persis and Muhammadiyah contain detailed prescriptions (see Appendix). They are, in effect, instruction manuals for the proper performance of the daily and the Friday prayers. The correct postures, movements and words are given and justified by *aḥādīth* and Qur'ān, which guarantee the correctness of ritual. The emphasis is on exactness and absolute certainty in observance. To this extent the Persis and the Muhammadiyah material is very similar. However, the tone of the former is much more decisive because of the constant preoccupation with *bidʿa* in *ʿibādāt*. Ahmad Hassan, for example, says:[273]

> A—What is the danger of having bidah in the area of ibadat?
> B—There is a lot of danger in that—there would be nothing holy or pure in our religion if every command could be added to or taken away from depending on what was considered to be good. Let me ask you a question to

> illustrate my point. Why don't we complete four rak'at when we perform shalat shubuh? Wouldn't that be a good innovation? Why on shalat janazah, shalat hari raya and shalat tarawih don't we use adzan? Wouldn't that be a good innovation?
>
> There would have been just one wise man originally who divided bidah in religion into five categories. Other ulama would have then just followed blindly. There were many ulama who critised that division. We can not be the sheep who follow after ulama, they are not shielded from error themselves.
>
> We have to follow the view that is supported by religious authority, even if it is espoused by a fool. Where there is a view that is not supported by authorities we must reject it regardless even if it is espoused by someone regarded as an expert by the rest of the world.

The authors of the Muhammadiyah *Keputusan*[274] are willing, up to a point, to allow some personal choice provided *aḥādīth* can be cited in support. This cannot of course affect fundamentals: the real point is emphasis. The NU, on the other hand, in a short *fatwā*[275] in 1971, was prepared to allow an addition to the call to the morning prayer. The authorities cited include the *Iʿānat aṭ-ṭālibīn*, although the passage is equivocal.

This reference brings us to public prayer, the *Jum'at* prayer, and it is in the context of 'public' that real dissension and difficulty in this Pillar comes to the fore. Such is perfectly understandable: one's duty as an individual alone is not the same as one's duty in public. This is not to deny the essentialness of the private prayer, which all the *fatāwā* sources insist on. The numerous citations from *aḥādīth* especially, and at length, demonstrate this point. Without the *shalat* one is 'lost'(to God), and each of Persis, Muhammadiyah and the NU reiterate this principle by extensive quotation from the relevant *aḥādīth* and text commentaries. One must pray with understanding, hope and especially humility. As we read in a Persis *fatwā*,[276] partly on the appropriate clothing to be worn at prayer, one may wear any decent garment provided it is not worn 'in a conceited way'. The idea of 'conceit', which is both personal and a judgement on the individual from outside, brings us to the public domain. An accusation of conceit is always public

The call to prayer (*azan*)

In 1932 the NU found it necessary to rule[277] whether it was permissible for more than one person to take part in the call. The *fatwā* is scarce on detail: it merely says it is proper for one person and permissible for more than one. We can only speculate about motive. The authority cited is hard to specify and in any case is not clear. It appears to be a passage from Bā-Faḍl's *Al-muqaddimat* in some Indonesian commentary,[278] but the Arabic cited has in fact no reference to the question.

As to the actual call to prayer, there are two *fatāwā*. The first, from the NU,[279] goes into some detail as to the permissibility of using musical instruments to inform people of prayer times. The use of the drum is approved but

the use of a gong is uncertain. A call by voice must be made from the mosque. No sources are cited but the *fatwā* stresses, somewhat inconsistently, that disturbance of neighbours is to be avoided. A more sophisticated discussion is in a Persis *fatwā*[280] from the same period: is it permissible to respond to *azan* transmitted by radio? The answer from Ahmad Hassan is that there is no binding condition that the person making the call must be seen, only that he must be heard at the correct time. Examples are provided: thus in the time of the Prophet himself a call was made before sunrise when the Companions were still asleep and the Prophet said nothing. Again, it is common practice in all Muslim countries for the caller to sit in a tower where he cannot be seen. In short, by analogy, the radio is merely an amplifier of the voice and sight is not a necessary condition. Further, there is no rule about regulating the volume of the voice; the degree of amplification is not an issue.

Place of public prayers

We naturally think of the mosque, and it is the obvious place to begin with an elaborate Persis *fatwā*[281] from 1938 by Ahmad Hassan. It is a classic exposition of the Persis method: '. . . I have collected 64 verses and *hadīth* . . . [and] divided them into 14 sections'. The first determines that mosques are to be used for the purposes of worship only; they are not shrines. In the second he rationalises a number of *aḥādīth* to demonstrate that the whole world 'is a mosque for the people of Islam'. Thus, just as sand may be used to clean oneself for prayer, 'all the earth may be used for shalat'. Third, building a mosque is a meritorious action and will be rewarded in heaven. Fourth, inconsistent *aḥādīth* are reported concerning whether a mosque can be built on a burial ground or a place that was once used for (non-Muslim) worship. The first *ḥadīth* forbade the building of a mosque on ground once used for worship and condemns this practice as characteristic of Christian and Jews, particularly their attachment to the gravesites of holy (venerated) people. On the other hand, the Prophet himself did order the construction of a mosque on such a site (at Taif). The *fatwā* is equivocal here: Ahmad Hassan clearly wishes to forbid the building of mosques at or near gravesites, a feature especially of the Javanese Islamic practice of *ziarah*,[282] but is unable to do so given the *aḥādīth* reporting the Prophet's actions. Fifth, he finds that an excessive decoration is forbidden especially as it is reminiscent of Christian and Jewish practice. The following three sections (6–8) set out rules for proper behaviour in the mosque. A degree of decorum and cleanliness is required, although eating and sleeping are permitted. Non-Muslims may enter, and poetry and recitation are permitted provided they are 'proper' or 'good'. Trading is forbidden. In his words:

> **Further Explanation**
> There are two *hadith* which forbid us to build a mosque above a grave.
> However, another *hadith* shows that we may build a mosque over old graves if

we dig them up. The *hadith* on decorations do not forbid us from building a large mosque, only from decorating it, especially with pictures.

The *hadith* which forbid us from talking too loudly do so because it will distract those praying. Likewise we are forbidden from looking for animals because it usually involves shouting. On that basis I do not think it would be wrong to place a note in a mosque inquiring after a lost animal or some other object which is lost. That would not disturb anyone's prayer. In the *hadith* people were forbidden from trading in the mosque regardless of whether anyone was praying, there is nothing to allow trading in the mosque.

There are some *hadith* which allow poetry and story telling in the mosque and others which forbid it. Clearly the difference is that it is forbidden while people are praying but allowed if they are not.

The NU, on the other hand, is solely concerned in its *fatāwā* with what one might call the practicalities of place of prayer. Two early *fatāwā*,[283] for example, allow for prayer places to be used where the distance to travel to a mosque is too great. No authority is cited except for vague references to al-Haytamī's *Minḥaj al-qawīm* and al-Kurdī's *Al-ḥawāshī'l-madaniyya*. In neither case is there a specific Arabic reference. Similarly, a sportsfield is permitted for use where the mosque is not large enough to accommodate all those who wish to pray.[284] The references are the same as in the preceding *fatwā*. The issue of where to pray, given the actual difficulties of accommodating a large gathering, came up again in the 1980s. Two NU *fatāwā* are illustrative. The first[285] allows the Friday prayer to be held in an office, provided the number who constantly attend is above that required for valid Friday prayer. In addition, only one prayer is valid in the office. This rule is clearly designed to prevent multiple prayers. The same rule was repeated in the second *fatwā*,[286] which prohibits such gatherings if there is a mosque within reasonable distance. The authority in both cases is a citation from the *Bughyat al-mustarshidin* repeated in an early 20th century *fatwā* from the Hadramaut. Finally, there is a rather strange *fatwā*[287] dating from 1933 which forbids prisoners, whether for life or fixed term, the Friday prayer. The authority is a short passage from Sharbīnī's *Mughnī'l-muḥtāj*. This can hardly be the current practice.[288]

Surprisingly, the Muhammadiyah has little on mosques as such, nevertheless there are some interesting observations. In only one of the *Tanya-Jawab* (No. 1) is there a separate section on '*masalah masjid*', and only four issues are discussed. The first is whether an old mosque can be used for other purposes such as Islamic education, as a library, or for other social-religious purposes. The answer is that these are proper uses, and this is justified by examples from history at the time of the Prophet. There are no details given, nor are there any references. Similarly in a contemporary *fatwā*,[289] but this time concerning a mosque in actual use, education was allowed but it was recommended that it be confined to the verandah. The reason was to avoid disturbing those at prayer, particularly as those being instructed could include children. No authorities are cited. There is one

further *fatwā*[290] in this section which denies the use of the term '*masjid*' to a building exclusively for the use of women. The Muhammidiyah view is that this is more properly called '*mushalla Aisyiyah*', the term *masjid* not lending itself to gender exclusivity.

More interesting are two later *fatāwā*. The first[291] is concerned with the place of prayer: (a) must it be in the mosque? and (b) are there particular prayers that must be in the mosque? So far as the daily prayers are concerned, the congregational *shalat* in the mosque is recommended and *aḥādīth* from Bukhārī, Muslim and al-Nasāʾī are cited. At the same time, the possibility of prayer outside the mosque is acknowledged and explained again by reference to the same *aḥādīth* sources. As to (b), the discussion is concerned with '*Lailatul qodar hanya di Masjid*' (*Lailat al-Ḳadar*). This is the 'Right of Divine Decree',[292] and falls during the last ten days of Ramadan. The main feature is that the believer retires from the world into the mosque for prayer (*iʿtikāf*) and to receive blessing. The mosque is in fact necessary and, while the Muhammadiyah *fatwā* does not cite the usual passages from Qur'ān,[293] it does cite S XXIV:36, '. . . in houses which God has permitted to be raised for honour; for the celebration in them of His name'.

The second *fatwā*[294] of importance here concerns a mosque in Jakarta, which is so constructed that parts of the congregation cannot see the *Imām* except imperfectly via TV or video. Is prayer then valid? The issue here of course is the rule that members of the congregation must follow the *Imām*. The answer is that the prayer is valid and the authorities cited are Bukhārī, Muslim and Ahmad. All give accounts from the time of the Prophet, where direct sight was not possible but the prayers were nevertheless valid.

This last *fatwā* brings us back to 'place of public prayer'. The mosque is a building; it is also a sacred space, the dimensions of which are not absolutely fixed. The Persis *fatwā* directs us to a place as an object, a building; the NU, on the other hand, makes us see 'place' of prayer as any space not otherwise forbidden; the Muhammadiyah see 'place' as both social and religious, and the idea of 'see' means how one perceives action in addition to sight as such. An office or a sportsfield may or may not be 'places', a prison is not, and the architecture of space in the interior of a building is again problematic for 'place of prayer'. These are the spatial contexts of *mubāḥ* for the individual at prayer. However, prior to prayer there is a further necessity.

Ritual purity

The individual must be in a fit state to pray. While God alone can judge the interior man, the law can establish criteria which can be seen and judged. All Indonesian *fatāwā* sources, except the MUI, deal with ritual ablution in detail. Most of the *fatāwā* on *wudu* (*wudlu wuḍūʾ*), give considerable space to the correct performance of ablution in quite standard *madhhab* Shāfiʿī

terms. However, it is not sufficient to leave the matter here; as we have seen in the discussion on the place of prayer, the *fatāwā* can take us in quite unexpected directions. In the first place, what is ritual purity with reference to prayer? Mohd Mahʾsum (Persis) gives us comprehensive answers, the first[295] on touching the Qur'ān without performing purification. The question in fact leads him into a comprehensive discussion of *najis* (impurity) (see below); we confine ourselves to prayer here. He begins by citing a *ḥadīth* which says that only the clean ('*thahir*') can or are permitted to touch the Qur'ān. This he classes as weak because of a weak link in transmission, but he appears uncertain and goes on to discuss why the *ḥadīth* is unsatisfactory in any case. This is one of the few occasions where Persis, through Mohd Mahʾsum, shows doubt on assessing *ḥadīth* and, as we see now, his arguments for not accepting it are rational and historical. He says '. . . let us look at this *ḥadīth* as though it is authoritative and consider its meaning'. He does this by analysing *thahir*: first, it can mean that only Muslims are such,[296] because they are not polytheists (he gives S II:28 as authority); second, those whose bodies are clean through bathing ('*hadits besar*, *ghusl*') are clean; third, the same through ablution (*wudu*). All these classes, according to the plain meaning of language, are clean and may touch the Qur'ān, and these are the possible meanings of the *ḥadhith*. However, each he finds is open to objection:

> None of the above can be what is meant by the *Hadīth* because the Prophet was known to have sent letters containing verses of the *Qur'ān* to infidel kings. If only the faithful were meant to touch the *Qur'ān* then the Prophet would not have sent these letters containing verses of the *Qur'ān*. Given that these kings certainly would not have cleaned themselves from all that is najis like Muslims and certainly would not have cleaned themselves from ritual impurities as required by Islam, the other three meanings also cannot be correct. There are the ulama who say that if one or two verses of the *Qur'ān* are mixed with other writings then this is different and may be touched even by infidel. This view is not correct because it is not accompanied by an explanation, rather it is just an opinion.
>
> In addition to this, we know that the Prophet used several writers to record the divine revelations he received. Yet nowhere is it said that they went and performed ritual ablutions when they were commanded to write and there is nothing in tradition to say that the companions of the Prophet were in a permanent state of ritual cleanliness.

The argument here is from history, but this is not the end of the matter: there is a further aspect to the problem. This is S LVI:77–79, '[The] Qu'rān most honourable . . . which none shall touch But those who are clean'. Does not the *ḥadīth* repeat the Qu'rān? Mohd Mahʾsumʾs answer is to put the verse into context, as he claims, and he defines clean as 'purified' and the best and strongest reading of 'pure' is the angels (*malāʾika*). For this reason there can be no connection between S LVI:79–80 and the *ḥadīth*. The real

purpose of the verse is thus to refute the claim by unbelievers that the Qu'rān emanates from Satan and not God. This line of reasoning is strained and unconvincing because the conclusion does not follow logically from the question. The connection is not there—we have an obscured middle. There is some syllogism being suggested, but it fails for obscurity. It is difficult to escape the conclusion that special reasoning is being employed in this *fatwā*. The conclusion seems perverse because there is no reason to bring in 'clean' with unbeliever and, while the quality of *tharir* is always debatable, this does not mean that the weight of *aḥādīth* and traditional practice can be ignored.

This brings us to the second Persis *fatwā*[297] on impurity, where the argument is equally tortuous. The question: may the receptacle from which a dog has drunk be used for *wudu*? The *fatwā* raises two issues. The first is dog as *najis*. It is the subject of continuing debate in the general Muslim world,[298] because of the animal's perceived impurity combined with its usefulness. This is true for Malaysia[299] and Indonesia as elsewhere. In the present *fatwā*, ritual impurity is in issue, and the *fatwā* puts forward two alternatives: that water which has been used to clean something *najis* becomes *najis* and thus cannot be used for *wuḍū'*; alternatively, it becomes *najis* only if its essential quality is changed by contact. 'Essential quality' is a new colour, smell or taste which the contaminant imposes.

This is the second and major issue. As in this case there is no change in essential quality, water, the previously contaminated receptacle can be used for *wuḍū'*. There is no authority in Islam to forbid it. This is the argument and, as in the preceding *fatwā* by the same man, the argument is strained and tendentious. It ignores practice and tradition. More to the point, in terms of its premises, the introduction of the idea of change in essential nature (see also chapter 5) is unnecessary and merely adds a false premise. It is certainly not going to convince the mass of ordinary Muslims. There is one further point: the *fatwā* also mentions the opinion of a medical doctor to the effect that dog saliva contains 'germs' that may injure humans, and for this reason dog-contaminated water should not be used for *wuḍū'*. The *fatwā* dismisses this as an argument: '. . . prohibition requires authority from Allah or the Prophet, not the opinion of a Dr . . .'.

We can compare this overcomplicated position with two earlier *fatāwā*.[300] The first discusses whether touching a woman invalidates *wuḍū'*; the question is decided on an analysis of the meaning of 'touch'. *Aḥādīth* are cited to show that touch may mean (a) contact with the skin or (b) sexual intercourse. It is the latter which invalidates *wuḍū',* and Ahmad Hassan finds support for this in a linguistic analysis of the Qu'rān (S II:236, IV:43, XIX:20, XXXIII:49) and *aḥādīth* from Ahmad, Bukhārī and Muslim. Again, from the practical point of view this position is probably not acceptable to the generality of Muslims in Indonesia. The second *fatwā* concerns the definition of the major ritual ablution (*ghusl*) with reference to women. A woman must complete this by bathing after menstruation, sexual intercourse

or childbirth. The question in this *fatwā* is whether a woman must wash (*mandi janab*) so as to remove the unclean condition (*janāba*) to the extent of wetting her hair. There are two views that differ as to the extent of washing: the first requires that every hair be wetted, the second that pouring water three times over the head is sufficient. Competing *aḥādīth* are put forward on each side, but what is interesting for us is the method of resolution adopted in this *fatwā*. While there is the usual Persis examination of weak links in the chains of transmission, the determination in this case (probably in favour of the second alternative) is that 'This is the opinion of the ulama from the . . . Hanbal school and most of the ulama Ahlul-Fiqh'. It is unusual for Persis to adopt this approach. The only explanation is that the extent of wetting is disputable, and Persis itself seems at that time not to have had a preferred position.

To some degree this uncertainty as to the minutiae of prescription does not seem to be so characteristic of the Muhammadiyah *fatāwā*. Instead, this source falls into two parts. The first, which need not concern us, sets out the accepted prescriptions for *ghusl* and *wuḍū'*.[301] The second part[302] consists of those rulings which take us to the margins of doctrine and, hence, are of interest here. I do not suggest that difficult questions set precedents—this is not the nature of *fatwā*—but that the hard questions force an element of inventiveness which may be as simple as compromise or as difficult as scientific innovation (see especially chapter 4). For the present, we can take two examples.

First, may bottled mineral water ('Aqua'—a popular brand in Indonesia) be used for *wuḍū'* either as it is or mixed with sand or earth? This last is a reference to *tayammum*, the option in certain circumstances to use sand instead of water for purification before prayer. By way of preface we might look a little at the concept of *tayammum*,[303] because the next two *fatāwā* are also concerned with it. Essentially, the use of sand or earth for purification is inferior to the use of water. For this reason there are extensive and quite complex rules as to when and in what circumstances it is permissible to use sand. There is considerable variation between and even within the Sunni *madhhab.* On only one point is there agreement, that *tayammum* is done only for the face and hands. The source for the practice is in S IV:43 and V:6. There is a real sense of emergency about its use.

Bearing these comments in mind, we may now come back to Aqua: is it 'water'? This is the point which the Muhammadiyah Majlis Tarjih fixed on for its discussion. It found that mineral water is truly water like water, from any other source (rain, well water, seawater), and indeed is superior in that it does not contain bacteria nor is it mixed with any impurities. Three citations from Qu'rān are given: S XXV:48, '. . . We send down pure water from the sky . . .'; VIII:11, '. . . He caused rain to descend on you to clean you . . . to remove from you the stain of Satan . . .'; IV:43, '. . . approach not prayers . . . in a state of impurity . . .'. This last is a reference to the difficulties of purification when travelling—that is, to *tayammum*. This subject

is dealt with directly in the last Muhammadiyah *fatwā*;[304] the question here was whether a sick person (‘*rematik*’) might use *tayammum* in preference to water for *wuḍū’*. The answer was yes, citing S V:7,[305] which specifically allows it.

We can leave the last word on *tayammum* to an NU *fatwā*[306] which forbids *wuḍū’* while seated in an aircraft. Prayers that follow are not legitimate, and merely mark the time as prayer time. No reasoning is given and the only evidence is a series of short quotations from the standard *fiqh* textbooks which merely repeat the known rules and conditions. This last may be a key to understanding the *fatwā*; no fewer than 15 separate sources are cited. Perhaps the most intriguing reference is al-Shaʿrānī’s *Mīzānal-Kubrā*, which is the classic exposition of differences between the Sunni *madhhabs* on *tayammum*. It would seem from this and also from references to Ḥanafī and Mālikī sources that the NU in this case was reluctant to accept that *tayammum* was sufficient to purify major ritual impurity (*janāba*). This is in fact a longstanding misgiving in Sunni scholarship. Obviously, sitting in an aircraft was not accepted by the NU ‘*ulāmā*’ as being sufficient to override doubt on this matter. I hasten to add that these comments are speculative, and views may recently have changed.

We are on more secure ground with the three remaining NU *fatāwā*. The first,[307] from 1935, merely repeats the rules for valid ablutions involving water and sand. The second[308] deals with the issue of whether a ritually impure *Imām* can perform a valid prayer. Of course he may not, but there is some discussion as to whether the prayers of members of the congregation are valid. It depends on when they are told of the impurity. Generally, the prayers must be repeated. The source is not exactly specified but is probably Qalyūbī’s gloss on Al-Maḥallī’s *Kanz ar-rāghibīn*. The final *fatwā*[309] raises the interesting issue of degrees of purity, and the definitions of pure and impure. In the technical jurisprudence this is *Ṭahāra.* The question for the NU was whether clothes dirtied with the blood of mosquitoes and clinging to a washed body invalidate prayer. This is a case of material (i.e. knowable through the senses) impurity. The texts are not clear. In this case the NU, relying on the *Iʿānat aṭ-ṭālibīn*, merely says that some ‘*ulamā*’ deny its validity. There is no final decision.

With these examples we can see that ritual impurity is a subject of some uncertainty in practice. All the *fatāwā* sources show attempts at interpretation. It is impossible to make clear distinctions between Persis, Muhammadiyah and the NU in this matter. To say or suppose that one of the three is stricter or more consistent than another is to misunderstand the issue. From the internal point of view ritual purity is crucial, yet its boundaries are impossible to determine with a logical precision. Each of the three sources, in its own way, accepts the idea of uncertainty, and this is important because uncertainty demands choice. The demand is always problematic because from variety we get ‘alternative’, ‘preferable’ and ‘best’. This is illustrated below.

Forms and formalities of prayer(s)

There is no alternative but to take this vast topic *in medias res*. We begin with the *Fatihah* (*fātiḥa*), the first *sūra* of the Qu'rān. Its recitation has consistently attracted controversy in Indonesia because it is part of *shalat*, and for the Shāfiʿī its recitation is prescribed. The issue is how it should be done.

All the *fatwā* sources (with the exception of MUI) devote space to the correct form. There is an NU *fatwā*[310] from 1938 which is short and somewhat cryptic to the uninitiated. It merely says that recitation of *Fātihah* is necessary and that when this is taking place '. . . you must all be silent', but that 'silent' means '. . . not speaking or reciting too loudly'. In other words, the option is silence or recitation in a moderate tone. There are in fact different views and different emphases.

In an exhaustive Persis *fatwā*, Ahmad Hassan[311] canvasses the alternatives. There is first the Ḥanāfī view that recitation behind the *imām* is forbidden. He rejects this position on the ground that the *ḥadīth* is weak. The second view is the orthodox Shāfiʿī position, that the *fātiḥa* only must be recited. This is the NU view, as it is of the Muhammadiyah. The latter, in two *fatāwā*, clearly forbid any additions.[312] The third alternative is that the *Fātihah* may be recited only if the congregation cannot hear the *imām*. This is Mālikī and Ḥanbalī practice, relying on S VII:204, '. . . When the Qu'rān is read, listen to it with attention, And hold your peace . . .'. In support there are *aḥādīth* from Ahmad and others cited, which Ahmad Hassan reads as stronger than those cited for the second position. The third alternative, therefore, is the preferred one because (a) if everyone recites with the *imām* there is no benefit because no-one is listening to him and (b) there is no actual lapse of time between the recitation by the *imām* and the following portion of the *shalat*. Something similar is proposed also by Muhammadiyah[313] but without the rationalisation, although it appears (unclearly) that the option of recitation remains available.

In a further *fatwā,*[314] Ahmad Hassan continues his argument by way of a dialogue between himself and an 'alim from Alabio' (unknown). The text reads as follows:

> Alim: If you act according to the teaching of the third group, as in the opinion of Imam Maliki and Hanbali, that is if you don't recite Al-Fatihah, if you can hear it from the imam, then your shalat will not be valid.
> Myself: If so, what group is correct?
> Alim: The second group (Syafi'i) is correct, the congregation must recite Al-Fatihah.
> Myself: What is your reasoning?
> Alim: The Prophet said: 'There is no shalat for someone who does not recite Al-Fatihah'. He also said 'When you are reciting with a high voice, you should be quiet, except for Al-Fatihah'. This means only Al-Fatihah may be recited.
> Myself: Doesn't that contradict the Qur'anic verse which says 'If the Qur'an is being recited you must listen and be quiet so that you receive blessing'?

> Alim: There is no contradiction because the specific *hadith* is an exception to the broad general verse. For example, according to the Qur'an an animal corpse is haram but *hadith* provides that fish and locust corpses are an exception.
> Myself: Are the *hadith* you refer to authoritative or not? For what reasons? Who were they passed down by?
> Alim: The ulama say that the verse is valid, I do not need to provide an explanation for that. If you wish, look yourself because I am busy. Try to explain whether the *hadith* was passed down from Ahmad, Malik, Muslim or Baihaqi. Whether it is valid or not. How do you know that Abdullah bin Umar was a loyal companion of the Prophet and that Zaid bin Tsabit was a close companion of the Prophet?
> Myself: According to imam Bahaihaqi the chain of authority for these two *hadith* were not preserved—so they are not valid. As for the congregation reciting it in their hearts, not with their tongues, the Syafi'i position demands that the Al-Fatihah be recited as normal. So none of the *hadith* which make it compulsory for the congregation to recite the Qur'an are valid and they don't warrant an exception to the Qur'anic verse which requires people to listen and be quiet when the Qur'an is recited. That we must be quiet and listen when the imam recited Al-Fatihah is also supported by several *hadith* and by logic—what is the benefit of the imam reciting Al-Fatihah if no one is listening?

Finally, while one may not add to or delete from the words of the *fātihah*, the question of whether one may pronounce it in Indonesian was put to Persis.[315] As we might expect, the answer was no—it is a translation and invalid.

Clearly, there is room for debate even in the fundamentals of the *fātihah*, and it is a debate that is divisive and stressful for the individual. An excellent example from Persis[316] is actually entitled '*was-was*'—extreme anxiety (to the point of distress and suspicion). The point at issue was whether the individual must recite perfectly (*fātihah* among other formulae) and, if not sure, persist in repeating the recitation *ad infinitum*. The answer from Ahmad Hassan is in two parts. The first is that excessive doubt arises from the problem with intention (*niat, nīya*), which he defines as occurring simultaneously to the action being performed. It must not precede or follow the act, so that trying to keep up intention at the time is the cause of anxiety. It is anxiety which makes for repetition and it is a typical feature of the Shāfi'ī school but not of the other Sunni schools. But taken to excess, hesitation brought on by anxiety is clearly the work of Satan. The way to cure this is to fight Satan, and Ahmad proved this to himself and others in public by a successful *wuḍū'* (i.e. one attempt only) using rainwater. His second part to the answer is that there is no evidence from the time of the Prophet of repetition aiming at perfection. Such an emphasis is a later factor introduced by those who teach correct pronunciation. In short, he is providing a comforting *fatwā* for the ordinary Muslim, and he specifically warns against 'straining the throat'. His more fundamental point is that excessive anxiety is the work of Satan in that the individual is obsessed with self-pride in the

correctness of his own rendition. On the other hand, an NU *fatwā*[317] allows a choice in recitation between using long and short vowels and long and short pauses between verses and between lines. There is no source or authority cited, but the longer versions seem to be the preferred option.

These comments bring us back to intention (*niat, nīya*). In the classical *fiqh*,[318] intention to pray outside correct ritual is just a wish or impulse (*ʿazm*), and of course a ritual form without intention is only a mechanistic formula without true validity. From the individual point of view, the only solution (to the insoluble) is the appropriate publicly accepted form or forms of showing intention.

We should pause for a moment here and consider 'anxiety' and 'public' and *mubāḥ*. Anxiety is essentially personal and internal. A good example is a rather moving question to the Muhammadiyah Majlis Tarjih:[319] might one express *nīya* in 'my own language to myself or must it be in Arabic?'. The answer is that one must have the right intention which engages the heart, but the Arabic is necessary as the language of Qur'ān and Sunnah. This, however, does not help on the public aspect, and here Persis denies the propriety of an audible recitation describing it[320] (*ushalli*) as an innovation (*bidʿa*). The enquirer had cited two purported *aḥādīth* (from Bukhārī and Muslim) justifying the practice. The Persis answer denies that these *aḥādīth* even existed and describes the sources—two books in Indonesian—as lies; the authors must be prepared 'to enter into Hell'. The books are not identified but are 'in our possession', and this illustrates the degree to which individual anxiety in public can be identified as a real issue. The evidence so far is that the individual must pray absolutely as one's neighbours do, external form is everything in social life, and the legality of form is crucial. For example, an early NU *fatwā*[321] stresses that prayer must not be said in an excessively loud tone. The same point is made in a later *fatwā*,[322] which forbids the changing of forms of prayer—in this case from singular to plural—when praying in a congregation. The *imām* should recite in the singular and the congregation say '*amin*' at the conclusion.

It is obvious that the difference in form that these *fatāwā* exhibit have direct consequences as to validity of performance of duty. Perfect ritual demonstrates legality. But whose ritual? We can take the example of raising the hands in *shalat* and *doa* (*duʿā'*), in which there are differences of opinion. The practice is closely regulated, in particular the height to which it is permitted and whether or not the hands may be spread out, and at what point in the whole prayer it is permissible. The Muhammadiyah *Himpunan Putusan* is a detailed manual of proper ritual, and has passages[323] on the subject. These, however, do leave the details somewhat unclear and are thus conducive to allowing degrees of public criticism and hence disputes over legality. As to whose ritual—the responsibility is clearly on the individual.

There is another aspect to ritual responsibility, and this can be illustrated in a pre-war Persis *fatwā.*[324] The circumstance is whether the *imām* may raise his hands when reciting the *qunut* (*ḳunūt*)[325] during the morning

prayer (*shubuh, ṣubḥ*). This is a technically complex issue. The *qunut* prayer basically expresses one's humility in the face of God and is recited to ask God's protection for the Muslim community in the face of threat. Details of the prayer and, in particular, when in *shalat* it should be recited are much disputed. The *aḥādīth* are not consistent, but there is general agreement that its use is permissible at least. In the case of our Persis *fatwā*, (a) could the *imām* raise his hands when reciting? and (b) if the congregation did not follow, is the *shalat* of the congregation still valid? As to (a) the answer given is that there is no support for the practice of raising one's hands, and the reason for this is that the Prophet never did it except when praying for rain (Bukhārī and Muslim). This is correct so far as it goes, but it neglects other *aḥādīth* which are open on the question. As to (b), the *shalat* of the congregation remains valid, relying in this case on *aḥadīth* from Ahmad and Bukhārī which say that merit is to the congregation and if there is a mistake then the *imām* must bear it. In other words, responsibility is not on the individual in this matter.

But what about those who can no longer feel anxiety or be legally called to account, but whose duties in *shalat* remain incomplete—in short the dead (*jenaza*)? What is permissible for the living to do for them? While it is a duty on the living to perform the ritual appropriate to the preparation and burial of the corpse,[326] there is more. First, prayers for the dead; second, prayers to make up or replace those which the deceased should have but did not perform. There is doctrinal dispute in both instances. The NU *fatāwā* have been very consistent over the years, and the earliest of these[327] distinguishes between prayers offered *for* the deceased and prayers offered *to* the deceased. The former is permissible, the latter is not, as it is a form of worship. The rationale here is perfectly obvious but, as is common throughout the Muslim world, including Indonesia, the line is sometimes hard to draw, particularly at sacred sites (especially tombs of saints).[328] On the other hand, 'make up' prayers for a person who dies leaving prayers unsaid are permitted. There is a brief discussion in an NU *fatwā*[329] but a much fuller explanation in a contemporary Persis *fatwā*.[330] As we might expect, the practice is forbidden, the *fatwā* citing two passages from Qur'ān (S XXXVI:54, '. . . ye shall be repaid [out of] your past deeds', and S LIII:38–40, '. . . no bearer of burdens can bear the burdens of another . . .'.) To allow the practice then would be akin to having 'a shalat petrol station where the lazy and unwilling could have agents fulfil their religious duties' (Ahmad Hassan at his best!). This rather sarcastic comment is bolstered by several *aḥādīth* (Malik, ʿĀʾisha and others, including '*ulāma*' from Ḥanāfī and Mālikī schools) which forbid the practice: 'Islam is not a religion about trading in rewards'. There are Muhammadiyah *jawab* to a very similar effect, though in more moderate language.[331]

On the other hand, the NU specifically permits the practice,[332] citing ʿAlwi as-Saqqāf's *Tarshīḥ al-mustafidīn*, a short and rather simplified gloss on al-Malībārī's *Fatḥ al-muʿīn*. Indeed the NU goes further, and in a relatively

recent *fatwā*[333] considers the propriety of giving advice to the deceased, so enabling him or her to give the correct answer to the interrogation put by *Hārūt* and *Mārūt*.[334] The practice is acceptable in the Shāfiʿī school by most '*ulāma*' but disapproved of by others. It is a common practice in Indonesia—perhaps it can be seen as lessening the anxiety of the living for the soul of the dead? No fewer than seven textbooks are cited in this *fatwā*, including *Iʿānat aṭ-ṭālibīn* and *ṣihāyat al-muḥtāj*.

Prayer while travelling

We can continue with the theme of anxiety, in this instance missing the Friday prayer because of the need to travel. All Sunni schools have detailed rules on special or short forms of prayer when undertaking journeys. There are relatively few Indonesian *fatāwā* and they all repeat the standard rules,[335] in particular following the classical texts as to definition of 'journey', and times and distances. There is little of interest for us here.

However, modern means of transport by air[336] and by sea now raise their own particular problems, and these are well illustrated in a MUI *fatwā*[337] of 1984. Here the question was the permissible options open to a ship's engineer whose voyage amounted to two Fridays in one week and none in another. Should he pray twice in the first instance and do make-up prayers in the second? The answer was that attending *Jumat* prayers on board ship was valid and even recommended but not obligatory. Attendance at one Friday prayer was sufficient. No opinion was given on the second question. Before looking at the reasoning in this *fatwā*, one point should be kept in mind. The calendar being used by the individual concerned and by the MUI is the ordinary Western calendar. It does not show time difference as measured by GMT or international datelines. For a Muslim traveller this is always a problem: the day of *Jumat* prayer can never be established with certainty *during* travel but *only at a destination*. The fact that two days of *Jumat* can occur in one set of seven days is an illustration of this. The same is true for the hour of prayer, as it is for the direction one must face at the time (if known) of prayer. There is no certainty in the measure of times.

The MUI *fatwā* attempts to deal with the issue of whether there is any obligation at all on travellers to pray. This is as far as it goes and, because of the uncertainties just mentioned, it is all that one might reasonably expect given the rather unusual nature of the question. From the outset it is obvious that the MUI intended to find that there was a duty, that there was an obligation for sailors at least, to pray. One can understand this: a sailor is travelling but he is always 'in the same place'—that is, on his ship, which is therefore 'a home'. It is on this ground that the MUI distinguishes the rules of the four Sunni *madhhab*. These rules do not apply. The *fatwā* could well have remained here as a perfectly logical *qiyās*. However, the members of the Committee seem to have been persuaded that the fact of 'movement' plus the occurrence of two calendar *Jumat* days had to be coped with. The

solution was to turn to a minority Ḥanbalī position that prayer is obligatory for Bedouin, who also live in a state of permanent movement. Travel for them is not 'travel' in the sense understood by the village or urban dwellers to whom the standard texts (Nawawī, al-Anṣārī) are intended to apply. This, again, is a perfectly proper and supportable position within the Sunni *madhhab*. One may read the adoption of the Ḥanafī view as an example of *talfīq*, but this is debatable; there is no element of mixing but the choice of a clear alternative. However this might be, the MUI Committee was still not satisfied.

The later part of the *fatwā* introduces the Ẓāhirī view that *Jumat* prayers are obligatory for travellers. Travel as such does not avoid the obligation. This is a view typical of the extreme literalism characteristic of Ẓāhirī doctrine,[338] the main principles of which are not fully (if at all) accepted in the Sunni *madhhab*. This is a true case of *talfīq*, and has been described by Professor Mudzhar as 'rather radical in character'.[339] So it is, but it is also unnecessary for the *fatwā* itself. While there is nothing wrong in considering the Ẓāhirī position (see chapter 4), no suggestion of *talfīq* should be made without good reason. Cause is lacking in this instance, and the result may be conducive to confusion in the future.

This *fatwā* actually raises more issues than it answers. Prayers in travel are problematic in the late 20th century, as we shall see later in respect of the *Haj* (below). For now we can take a lesson from this *fatwā*, which is that any '*ulāmā*' or Committee must beware the temptation to overrationalise or appropriate sources just to meet new conditions. The very diffuseness of time and travel may appear daunting but the logic of *qiyās* is almost certainly sufficient to cope as we see in our final section on prayer.

The Friday sermon (*khuṭbah*)

This is an integral part of *shalat* and now in Indonesia, at the beginning of the 21st century, uncontroversial in form and also in language. This was not always the case, and the intense debates of the 1930s–50s still resonate today, though in a much attenuated form.[340] The main issue is language: must the sermon be in Arabic or is an Indonesian language version permitted? As early as 1926, the NU formally decided[341] that translation to express true meaning was permissible. But the same *fatwā* went on to say that the Arabic language was the best option for the sermon, to be followed by a summary explanation in Indonesian. This is an equivocal position: the difference between a translation and a summary is considerable. As a matter of practice, *khuṭbah* have been and are now delivered in Indonesian, but this does not dispose entirely of the language issue. Stated shortly, if the *khuṭbah* is integral to *shalat,* then Arabic must be the language of the sermon. This is the literalist position, never seriously held in Indonesia, but it is a nagging issue in 'modernist' circles. The anxious query still appears,[342] to be answered 'rationally'. What is 'rational'? The most comprehensive answer is found in

a series of Persis *fatāwā* from the late 1930s, and the arguments are absolutely contemporary for Indonesian Islam. It is Persis at its scriptural best, as the following extracts demonstrate:[343]

> The Prophet delivered the sermon in Arabic but he was an Arab in an Arabic speaking land . . . The sermon is supposed to offer advice; it cannot do this if it is not understood . . . If it is obligatory for the sermon to be in Arabic, then it would be obligatory for all Muslims to know Arabic, which we know it is not . . . There are those who say that if the sermon can be changed [that is, language] why not the shalat also since we must also know its meaning . . . these two things are different . . .

A little later, we have the following passage:[344]

> To these inflexible ulama we ask—why do you give advice to people in a language other than Arabic when the Prophet only ever gave advice in Arabic?
>
> If it was possible to have an Islamic state then of course it would be best and appropriate to make the whole population learn Arabic so that Arabic could become the language of the global Islamic community and the connection between groups would be made easier. But what can be done? Here, in this day and age, people who study Arabic can't even get public service jobs.

And a final example:[345]

> If you deliver the sermon in Arabic you are following the Prophet from a linguistic perspective but not from a content perspective. If you deliver the sermon in a language that people understand you are following the Prophet's purpose in giving the sermon, that is to give advice. Which is better?—you decide. However, remember the words of imam Syafi'i—when you speak, weigh your words carefully because what you say is a measure of your intelligence.

These passages emphasise that the *khuṭbah* has a rational purpose—to increase one's understanding of Islam. That understanding is essential to achieving a successful Muslim life. It is important, however, to remember that while the *khuṭbah* is integral to the Jumat prayer it is not *ʿibādāt* so far as language is concerned. This was a divisive issue in the 1930s because it defined boundaries within the Muslim debate. On the one side there was and is the position that prayer in daily life ideally determines that life. On the other hand, prayer is but one among a whole set of obligations and must take its place as one factor among many. In theory, prayer is primary; in fact, the nature of 'primary' is debatable.

These comments bring us back to *mubāḥ* in its public aspect. There is no doubt that it is 'highly charged' and that individual anxiety is a large part of the charge. All of us must die and the 'torment of the grave', to which all our sources devote attention, is a real possibility. While all agree that

correctness of prayer can avoid the worst, there is disagreement as to 'correct'. In this sense *mubāḥ* is not a neutral class and prayer is problematic, both in private (conscience) and in public (legal duty).

SHIYAM (ṢAWM)

The notion of 'correct' as a definition of *mubāḥ* is nowhere better illustrated than in the *fatāwā* on the fast. An interesting place to start is with a recent Muhammadiyah *fatwā*[346] in response to a question asking whether taking medicine during the fast is permissible. But the question also contained an assertion that '. . . it [medicine] is permissible because it is not for pleasure'. This drew a sharp response from the Majlis Tarjih, which said '. . . we do not use logic for religious observance but instead follow the Qur'ān and sunnah . . .', '. . . religion is not inconsistent with reason but logic has no place in '*ibadat*'. While no authority is cited, another *fatwā*[347] contemporary with this one allows the taking of medicine during the fast if a medical need can be shown. The authority is S II:184, '. . . if any of you is ill . . . the prescribed number [of days] should be made up later . . .'. Authority, in other words, is not in logic or reason as such but in Qur'ān and sunna. For example, kissing one's wife is permitted[348] citing *aḥādīth* reported by Muslim from ʿĀ'isha.

The Muhammadiyah position is set out in detail in its *Himpunan Putusan*, which devotes about 20 pages to *shiyam*. It begins by citing S II:183–187, the basic rules, followed by 31 *aḥādīth* giving detailed prescription. The information is straightforward; the possible controversial issue is a short discussion of which method should be used for dating—sight or calculation. Both options are given but no recommendation is given either way.

In the succeeding *Tanya-Jawab*[349] there is little that is of interest here. The issues are simple and are answered on the standard *aḥādīth*. On the other hand, this may be a slightly unfair comment in light of the quoted passages immediately above on the place of logic and reason vis-à-vis Revelation. The former is restrained by the latter but the parameters of restriction are not clear. However, the fact that members of Muhammadiyah are not clear as to priority must be disturbing. Our other sources are much more satisfactory in this respect; both NU and Persis *fatāwā* contain an elaborate discussion, from which the following selections are taken.

Replacement (or 'make up') fast

The principle of making up or replacing missed days in the fast is undisputed. The cases in which this exemption is made are illness and travel. There is no dispute or controversy about this. But may one make up for another, alive or dead? Essentially this is the same issue as saying prayers on behalf of the deceased, who for some reason has not performed this obligation. The NU[350]

adopts the position that this is a valid act, provided the person doing the fast is a relative of or has permission from the family. However, it can be done only once, because the family must be able to believe that the debt has been cleared once and for all. The authority cited is as-Saqqāf's *Tarshīḥ al-mustafīdīn*. The Muhammadiyah adopts the same position,[351] but uses a *ḥadīth* from ʿĀʾisha for authority.

However, Ahmad Hassan,[352] in considering the same *ḥadīth*, while admitting its validity, cites other *aḥādīth* from Companions of the Prophet to the contrary. He claims also that it contradicts the Qur'ān itself, S LIII:38–40, '. . . no bearer of burdens can bear the burden of another'. And S XXXVI, '. . . you shall be repaid for . . . your past deeds'. These are exactly the citations he uses in the case of make up prayers (above). But the *ḥadīth* is certain, as he admits, so that he is relying on a perceived inconsistency between Qur'ān and *ḥadīth*. The argument is strained and he does not develop it, saying instead '. . . make up your own minds or at least quickly dismiss our argument . . .'. The generality of Indonesian Muslims have taken the latter option. This is an example of the limits of an excessive rationality in the face of an authority on which one bases one's position but which one wishes to avoid in a particular case. The advice '. . . make up your own minds' is not a sufficient answer. *Mubāḥ* is here an empty class.

Voluntary fasting

This is recognised as a meritorious practice, but it is by no means without its critics in Indonesia. While the NU takes it for granted, Persis does not and in a long *fatwā*[353] illustrates yet another definition of, or at least approach to, correctness as an explanation of *mubāḥ*. The voluntary fast (*Nawm al-tatawwaʿ*) is considered meritorious and the preferred time is the 2nd to the 7th Shawwāl—that is, immediately following the ʿĪd al Fiṭr. The Persis concern is that while the voluntary fast is permissible it should not become recommended. If so, the danger is that it would be seen as an extension of Ramaḍān and thus an innovation. It might even become obligatory in the minds of many on the grounds that unless it was performed, the *shiyam* itself would be seen to be incomplete. The authority he cites is a *ḥadīth* by Imām Mālik or, better, a reading of this *ḥadīth*. The interest for us is not in the *ḥadīth* but in Ahmad Hassan's interpretation of what he supposes Mālik to have meant. His explanation of why the Imām was cautious about the practice is his (Mālik's) fear that it would become an innovation. This does not mean to say that the practice as such is *makrūh* (reprehensible). However, there is a danger of conflating classes of action simply because the voluntary fast is linked by time of performance to the Ramaḍān fast, which is of course *wājib* (required). This appears to be the reason why Ahmad Hassan denies *mandūb* (recommended) to the voluntary fast. From *mandūb* to *wājib* is too easy, especially for the ignorant and enthusiastic.

A related issue concerns the fast and travel. It is accepted that travellers may break the fast but there is disagreement about when exactly this is permitted. For example, does 'on a journey' (S II:184) also include the time immediately prior to departure, when one is on the point of setting out? The Persis answer[354] is that the *aḥādīth* (Bukhārī and Muslim) are inconclusive or weak, but they do actually forbid breaking the fast immediately prior to travel. More interesting is the following:

> There are those who say that you can't open the fast while you are still in your own country by drawing an analogy with shalat. However, this type of reasoning from analogy is flawed because shalat and fasting are performed in different ways and that contradicts with authoritative statements from the Prophet.

This is another example, here on *qiyās*, of distinguishing separate classes of action. *Shalat* and *shiyam* are claimed not to share a necessary common feature so as to allow *qiyās* as the operative principle: '. . . they are performed in different ways'. Further, *qiyās* is inappropriate because the texts (*aḥādīth*) on the matter are known, '. . . authoritative statements from the Prophet'. This can be compared with a recent NU *fatwā*,[355] which clearly prescribes prayer and fast for travellers. The same general rules are prescribed for both, with no explanation and minimal references. The Persis *fatwā* is to be preferred.

Calculation of Ramaḍān

Calculations of times for the beginning and end of Ramaḍān (*Bulan Puasa* in Indonesian) have always been a matter of controversy in the Muslim world. Because Islamic dating is based on the lunar year, the sighting of the new moon is decisive. Apart from the physical difficulties (cloud, fog), the 19th and 20th centuries have brought their own problems with new methods of calculation and communication of lunar times.[356] The Shāfiʿī, in particular, have always been reluctant to accept any alternative dating method, even restricting the distance (about 140 km) from beyond which a sighting will not be accepted. In Indonesia it is not until comparatively recently that the issue was more or less settled, although there is still uncertainty and debate in some quarters of Muhammadiyah, NU and Persis.

The major problem in Indonesia is the insistence by the state that it and it alone has the authority to calculate times for the whole of the country. One might see this as another aspect of state control of Islam (see above) or, alternatively, as an effort towards standardisation of times for the convenience of society. Whatever the view one adopts, times for the nation on *saat berbuka puasa* (time to break [lit. 'open'] the fast) are calculated for the whole country and published in newspapers and on television.[357]

The most extensive and complex response from the Muslim side is to be found in NU *fatāwā,* all relatively recent. They fall in a sequence, the later

referring to the earlier, and through them we can trace a progression in the NU response. The first,[358] from 1954, consists of two apparently unrelated propositions: (a) setting the time based on calculation was not used at the time of the Prophet and the Four Rightly Guided Caliphs; (b) it is not permitted to make a public statement fixing the days on the basis of calculation without an announcement from the Ministry of Religion. This is 'to prevent turmoil amongst Muslims'. There is a minimal citation of sources which, in any case, apply only to (a). The second *fatwā,*[359] from 1983, states that it is not obligatory (*wājib*) to accept a calculated date. Only experts (not specified or defined) may perform such calculations. Those who believe in them may adopt them. The last *fatwā,*[360] dating from 1987, specifically refers to that of 1983, but now a much more detailed argument is put. The following is a summary of the *fatwā*:

> The examination of the moon as the basis for setting these dates was put into practice by Muhammad and the Khulafaur Rashidin and upheld by the four legal schools. Whereas the astronomical calculation basis was never taught by Muhammad and its validity is challenged by the ulamas.
>
> The public proclamation of the dates based on astronomical calculation by a judge or governor is not affirmed by the four legal schools.
>
> NU is a body which follows the path and teachings of the Prophet, the Companions and the Ulamas.
>
> The National Congress of Learned Scholars (18–21 December 1983) has made a decision to abide by the lunar examination method for setting the start of Ramadan and Idul Fitri which was ratified by the 27th National Congress of NU (1984).
>
> And in order to have uniformity amongst the NU members, and with the purpose of including the setting of Idul Adha, the National Congress of Learned Scholars 15–16 November 1987 has decided the following:
>
> - A publicised date by a judge or governor may be affirmed if it is based on the lunar inspection method.
> - NU has long followed the opinion of the scholars that one date should be set for Indonesia regardless of differences in lunar aspect across the nation.
> - Performing the lunar inspection is a religious duty according to the four schools except Hanbali which considers it meritorious. The performance of this inspection by the government is sufficient for the whole Islamic community of Indonesia.
> - The NU Committee of Astronomy and Examination must carry out the principles of examination by ascertaining the start of Shabaan, the date of the start of Ramadan and performing the lunar inspection on the night of 30 Shawal and 30 Dzul Qada then reporting the findings for the start of 'Dzul Hijjah' to the government because it often does not produce detailed announcements of this date. The results should be promulgated to the regions and branches of NU in Indonesia.
> - All members of NU at all levels must be instructed to scrutinise the government broadcasts concerning these dates. If they are based on lunar inspection, follow them, if based on calculation, they can be disregarded,

> and the correct dates are the day following the one promulgated. This approach is in keeping with all previous NU decisions and the 1945 Constitution (Art 29(2)).

The authorities are in *Bughyat al-mustarshidīn*, a compilation of *fatāwā* from the Hadramaut, exactly the same as in the two preceding *fatāwā*.

A reading of the passage just cited shows that while the original position—to reject calculation—has been maintained, a state presence has been admitted for the purposes of proclamation and administration. There is, however, no single Indonesia-wide date, as this is a geographical impossibility. The practice now is to give a time and date centred on Jakarta with plus or minus figures for each area. These figures are of course based on calculation but, as the *fatwā* insists, the option of a lunar examination always remains. Whether or not the option is widely exercised or exercised at all varies to an unknown degree. The further interesting point is that the 'official' lists of dates and times have the authority of the government, which is providing a standard set for the benefit of the Indonesian *ummat*. It is a public service for the Muslim community nationwide. The *fatwā* does recognise this, but insists on a duty for the individual Muslim to decide for himself or herself. In short, the classical texts retain their position as the ultimate arbiter. Authority is the key issue: does the authority of a mathematical calculation override the authority of Revelation (see chapter 4)?

The *fitrah* (Ar. *fiṭr*) obligation

This is the obligation to provide for the relief of poverty at the end of *Puasa*. The *fitrah* is part of the wider *zakāt* (below), but we take it here because the liability to pay is, at the latest, the 1st of Shawwāl; the *fitrah* is part of *Puasa*, so there is no dispute or uncertainty as to time of payment. Uncertainty is, however, found in the definition of 'poor' and whether this class is wide enough or can be re-defined to include public purpose or good causes. Do the original rules constitute a closed class? This is properly considered in *zakāt* as such (see below), but there are *fatāwā* on *fitrah* which introduce us to the difficulties. The point of raising these here is because the *fitrah* payments, unlike *zakāt,* are almost always made at the end of *Puasa*. *Zakāt* has been and is commonly avoided but the *fitrah* never; it is fundamental to the fast, and avoidance is widely seen as invalidating the whole of the preceding sacrifice.

The Muhammadiyah, while accepting[361] the formal classes of those entitled, are prepared to include also *fitrah* for the newly born[362] on the grounds that the payment is a contribution to purification or cleansing, which is a socially desirable purpose. On the same theme, payment to or for the advantage of a minor is permissible.[363] In both cases it appears that the recipient was a member of the same family[364] as the donor, so that the degree of uncertainty as to propriety of payment is much lessened. In short,

a known class can be negotiable as to membership. But what about an intervening agency?

Muhammadiyah has taken this up in a *fatwā*.[365] May *fitrah* be used as capital to found or support an institution for the relief of poverty? After a lengthy review of Qur'ān (S XXVIII:77, LII:38 and LIX:18) and *aḥādīth* from Bukhārī and Muslim, the decision is that *fitrah* may be used in this way but only through a restricted list of named organisations. The relief of poverty is fundamental;[366] *fitrah* cannot be used for other, however worthy, causes, for example to support or found a place of devotion.[367]

ZAKĀT

These comments bring us to *zakāt* proper and to carry on immediately the issue of an intermediate agency we have a Persis *fatwā*[368] which, among other questions, asks whether payment may be made to an organisation. The answer:

> As for using zakat fitrah to establish an organisation, in my opinion this wouldn't fall into the seventh category. Establishing organisations is not something commanded by our religion and also organisations usually become a place of pleasure where people simply meet or play. There are more than a few organisations which were started with good intentions but have since become places of alcohol, gambling, dancing and other such sins. At the very least the organisation will hold soccer matches, which, although not like gambling and the like, certainly is not within the category—'for the sake of God'.

This is not the Muhammadiyah position, but we can distinguish between the two by remembering that the former is dealing with poverty while this Persis decision is concerned with the class 'for the sake of God' or the 'purposes of Allah'. Originally this was meant to finance Muslim wars but is used more generally now to support the interests of Islam. The original classes of payee are in S IX:60: the poor, the needy, those who work to collect or administer the fund, Muslims in enemy hands, slaves, debtors, those working 'in the cause of God' (above) and travellers in need. In S II:215 the emphasis is wholly on relief of poverty. The same view about 'purposes of Allah' is found in an NU *fatwā*[369] of 1926, which forbids *zakāt* being used for mosque building, religious schools or housing. 'Purpose of Allah' means actual war. On the other hand, in 1981 the NU was prepared to admit[370] that there are two opinions, permitted and not permitted on the question. Admittedly there are 40 years between the two *fatāwā*, which might be explained by social change. On the other hand, the actual reasoning in the later *fatwā* is extensive, because it recognises a diversity of texts as sources and also seems to recognise texts from outside the Shāfiʿī tradition. This does not mean to say that the argument is complex in any sense. The earlier NU *fatwā* is cited alongside text extracts, but no conclusion is

reached. In 1986 the NU revisited[371] the issue and returned to its original position: 'social bodies' cannot receive *zakāt* because they do not fall within the classes in S IX:58–60. No sources are cited. The NU collective memory appears to be somewhat limited in this case.

Staying with the collecting agent (*ʿāmil*): what exactly is it, and what is a legitimate agent? As we have seen, Persis reject the idea of agent and the Muhammadiyah severely restrict it. The NU is as little enamoured; in 1960 it was prepared to say[372] that a committee not appointed by an *imām* for the purpose of distribution is not an acceptable board for distribution of funds. The authority cited, *Fatḥ al-qarīb*, appears to have little to do with the decision. It is appointment by the *imām* which appears crucial for the NU. In 1986 a further *fatwā*[373] reinforced this position: a committee appointed by the *imām* may receive the *zakāt*. But this *fatwā* applied only at the village (*desa*) level, where the *imām* is, of course, in charge of religious matters.

There is deep suspicion of an intervening body in connection with *zakāt*. This is understandable given the high levels of corruption and inefficiency in Indonesian bureaucratic practice. The Indonesian government has, however, recently attempted to control *zakāt* by establishing the *Badan Amil Zakat* (Zakat Collection Board) under the control of the Ministry of Religion.[374] It is a comprehensive attempt to organise all *zakāt* payments for all of Indonesia in detail on something like the Malaysian model.[375] It is too early to know how, if at all, the system will work. It is worth noting that the main provision of the law appears in large-scale newspaper advertisements published just before the end of *Puasa*. Indonesia is rather late in this respect; all governments of Muslim-populated states have consistently attempted to control *zakāt* monies which, though perhaps inconsiderable on a state budget basis, are socially immensely important as showing the public face of a Muslim tax for charity. It is essential for a government to be able to demonstrate its credentials in this way.

In contrast to the proposed state simplification, which is part of the simplification of Syariah in Indonesia (above), the *fatāwā* demonstrate just how complex the *zakāt* has become. The reason for complexity is not hard to find: *zakāt* is property being transferred from one person to another or to a named class of recipient. In such a transaction, the nature of the property involved is crucial. For peasant proprietors in Indonesia, the main form of property is land. Movables, cash and jewellery are secondary. For contemporary urban dwellers the main property is a house and salary, a pension and possibly investments. (The poor, by definition, do not own property and do not pay *zakāt*.[376]) These forms of property are not in Revelation or in *aḥādīth*, nor are they in the *fiqh* texts. While the modern forms are not known in these sources, the individual Muslim still does possess property and must pay *zakāt*. The issue, therefore, is to convert one form to its equivalent in another so as to preserve the practicality of payment. Practicality of means of payment is the key to preserving liability to pay. If payment cannot in fact be made, then liability disappears; it is just impossible.

The Muhammadiyah confronts the problem directly. *Himpunan Keputusan*[377] begins by citing the relevant passages from Qur'ān (S XXIII:1–4, XXX:39 and II:267) and follows with a wide selection of supporting *aḥādīth* from Abū Za'īd, Muslim, Abū Dāwūd, Bukhārī and others. The content from these sources is the classical set of prescriptions on forms of property and the appropriate rates for each form. Thus we have: (a) crops at 10 per cent or 5 per cent, where irrigation is necessary and the unit for calculation is the Arab *wasq* (in Indonesian, *wasaq*); (b) animals, where the *Himpunan Keputusan* lists out camels, sheep, cattle and the variations and equivalences among and between them; (c) gold and silver, where the rate is 2.5 per cent and the unit of calculation is the *dirham* and *dīnār*. Contemporary weights for gold and silver are also given. The *zakāt* must be paid at the end of *Puasa* and taken within one year. The proper recipients are the poor (S IV:60), especially poor relations and the poor of the district. In short, the Muhammadiyah state the original rules but this does not mean, or even imply, a rigid adherence to them. The contemporary *fatāwā* show otherwise.

There are a number of examples from Muhammadiyah on the application of these principles in contemporary Indonesia. The first[378] is on whether property in the form of shares in a commercial company is liable to *zakāt*. The answer is that *zakāt* must be paid. Although the answer is not clear, it appears that the appropriate rate should be that for gold and silver, 2.5 per cent. We can understand the rationality of making this equivalence of different forms of property. However, while this point creates no difficulty, indeed no-one would deny *ʿilla* in such a case, the *fatwā* does still raise a difficulty. This revolves around who is to pay. Two answers are given: the owner of the shares or—and here is the problem—payment by the company on his or her behalf. Is this a negation of personal responsibility? The question is not answered or even raised, but it is important because *zakāt* is essentially a personal duty. To allow this to be done by another, even for the best of objects (e.g. relief of poverty) may still be seen as non-performance for the sake of convenience. It is another example of the intervening agent (above), though here as to the donor and not the recipient. This decision has one further interesting feature: no Qur'ān or *ḥadīth* authority is cited. Instead, the Majlis cites a Conference of Islamic Jurisprudence decision (Jeddah, 1988). No details are given but it is a rare example of the direct adoption of contemporary Arabic thought in Indonesia. The extent to which that decision has been thought through is unknown, and whether a consensus can be arrived at for a true *qiyās* remains for the future to determine.

The second *fatwā*[379] discusses the minimum amount of income required to be liable to pay *zakāt*. This is *niṣāb* and the texts, repeated in the Muhammadiyah material, give detailed rules. However, in our *fatwā* the property is a monthly salary, quite small by any measure. The salary is in the form of banknotes. Here, the Majlis had recourse to equivalence, *not* analogy, by saying that if the amount of notes received is equivalent to 85 grams of gold

per year then *zakāt* at 2.5 per cent must be paid. As a practical proposition this is an impossibility: one would have to know variation in the gold price, the relation of currency notes to gold prices (local or international) and the degree of inflation. But does the practicality make the answer invalid as a principle? If by principle we mean *ʿilla* then the answer is yes—a variable equivalence is not a sufficient cause. The Muhammadiyah Majlis itself demonstrated this in a decision from the same time, saying that the recipient of a very small pension need not pay *zakāt*. The 'poor do not pay *zakāt*', although as an earlier Persis ruling shows this is by no means an uncontested position.

The Persis discussion,[380] although from the 1940s, is important because the arguments on the definition of poverty have not lost their immediacy and relevance. What is 'poor' is always the question. It was answered in the 1940s by reference to weight of rice. One had to pay about 4.5 lb of rice which, at 10 per cent, meant the possession of about 45 lb. An amount less than this defined 'poor'; in the words of the Persis *fatwā*, '. . . those who do not have enough for lunch and dinner'. Translated now into the equivalent of the buying power of a small pension, the same argument applies. To demand that the poor pay *zakāt* is not rational, nor is it required by religion.

We are now finally in the realm of money as the method to pay *zakāt*. Animals and crops are not contemporary currencies. This means that the sources and types of money are crucial. The *Badan Amil Zakat* assumes payment by money. The other payment which is compulsory for an Indonesian Muslim is tax. Is *zakāt* the same as tax or is it in lieu of tax? The Muhammadiyah is clear that the two payments are quite separate.[381] The payment of one does not absolve one from the obligation of the other. This is a rational decision in the context of the modern nation-state but it leaves the state the initiative to determine the agenda for payments and types of payment. Probably there is no alternative, but this Muhammadiyah *fatwā* advances us little in the sense that the Islamic side appears to lack any constructive initiative from the secular point of view.

The state now has control of money—for good or ill, efficiently handled or not. The *zakāt* payments can never be separated from state interest, and must in fact conform to a national finance system as interpreted by the Ministry of Religion and/or the Ministry of Finance. This is the secular position, and the new *zakāt* legislation exemplifies it. An interesting response to the state interest from the Muslim side can be found in the *fatāwā* on capitalisation of *zakāt*. This is understood to mean that while the objectives of *zakāt* (relief of poverty) remain the same, the appropriate method involves payment into a fund to be administered for the general good. The Muhammadiyah answer[382] is to reject this method, except (a) with the consent of people entitled, and (b) if it can be shown that a capitalisation would be more useful than direct payment. Both options, of course, bristle with difficulties, but at least the possibility of the option is recognised.

The NU, on the other hand, rejects the option outright. In a series of *fatāwā* in 1986 we can see illustrated what appears to be a stubborn refusal to accept any form of capitalisation involving any organisation intermediate to donor and donee. In the first,[383] organisations may not receive *zakāt* or part of *zakāt* on the grounds that they do not fall within one of the eight groups named in the *fiqh*. No authority is cited. No part of *zakāt* may be used for capitalisation.[384] Again, in an accompanying *fatwā*,[385] a part of *zakāt* may not be withheld and applied for some other public benefit. However, there is a further comment which does cite an unidentified reference to the contrary. The results in these *fatāwā* can be usefully compared with an earlier *fatwā*[386] of 1981, which gives two alternatives: it is permitted to direct *zakāt* to 'positive' social ends (e.g. for example for mosques, Muslim education); not permitted as being outside the established categories of recipients. The authorities cited for both options are the standard text books but the actual passages are equivocal and uncertain, except for the second option. Finally on this matter we can cite the last *fatwā*,[387] which forbids a *zakāt* committee from selling rice and using the proceeds for policies of its own.

The weight of the evidence from these *fatāwā* and also from the Persis *fatwā*[388] is against innovation, but having said that it is also true that the alternatives have been canvassed. Both NU and Muhammadiyah are clearly reluctant to accept alternatives. However, the new state legislation, which seeks to appoint *zakāt* committees at all levels from village, district, provincial to national, may well pre-empt these *fatāwā.* The future will tell.

There is one important class of property that is potentially *zakāt*—this is the profit from trade. The definition of 'trade' varies through time and place. The original medium in the *aḥādīth* through which profit was expressed was gold and silver. In the 20th/21st century the forms of trade and profit have undergone extensive change. There are new forms of contracts, not known at the time the *fiqh* rules were crystallised. The obvious example is the new 'Islamic bank/economics', much discussed from the 1970s and recently implemented, to some extent, in Indonesia.[389] This is considered further below (see chapter 5, on money and money contracts); all that need be kept in mind here is that the forms of property assumed in the *fatāwā* are now subject to extensive reformulation.

We begin with the NU *fatāwā* from the 1920s, not exactly contemporary but useful because they already show the challenge of the cash economy to the *fiqh* of the '*ulāmā*' at the time. The first,[390] from 1928, discusses the validity of the practice of having part of *zakāt* paid in kind (here rice) to the collector. This was a quite common practice (*adat*). The NU found that the contract to sell was valid on the ground that the property had already been transferred and the contract was subsequent to a change of ownership. The authority cited is *Iʿānat aṭ-ṭālibīn*, which is correct so far as the contract is concerned. However, the whole procedure is in fact a matter of *adat*, so that we have an interesting example of custom validated from *fiqh*. The unsurrendered portion of the *zakāt* could not, however, be sold because

there had been no transfer of possession; obviously a subsequent contract could not arise. The second *fatwā*[391] again raises *adat*. Here land was worked by sharecroppers who, as individuals, did not have enough income to be obliged to pay *zakāt*. Was the owner obliged to pay for them because his share from their joint labour was sufficient to oblige him to pay? The answer was no; no sources were cited except a general reference to 'texts of law'. The practice is in fact an issue in *adat*, and one severely discouraged in the NEI as contributing to peasant indebtedness. This was never really controlled, and sharecropping remains a serious problem to this day.[392] More generally, the Islam–*adat* nexus remains unclear in its nature and, as Professor Roy Ellen pointed out 15 years ago, neither 'Islam' nor '*adat*' '. . . have constant and unambiguous meanings.'[393] The same is true for property liable for *zakāt*. While the debate in the *fatāwā* is conducted in terms of *fiqh*, the *forms* of property being discussed are not known in the classical texts.

There are *fatāwā* which attempt to deal with new forms—that is, with contemporary economics. The NU again provides us with excellent examples, and the time frame here is important. These *fatāwā* come from the 1980s, a period of rapid commercial growth in Indonesia. The hotel and transport industries feature prominently. At the level of trading there is no difficulty: these businesses are like any other and can easily be accommodated in *fiqh* as to *zakāt*.[394] However, where a hotel is operated and maintained but there is no discernible profit, then there is no *zakāt* liability. This does not deal with the circumstance of growth in capital value of the hotel that is later sold for a sum in excess of the purchase price and maintenance costs. In a *fatāwā*[395] of 1986 the NU considered just this problem and found, quite rightly on the texts, that *zakāt* could not be demanded. *Zakāt* requires profit from trading calculated on an annual basis; capital appreciation, as such, cannot be calculated on this basis. 'Profit' and 'trade', therefore, are now unclear classes.

There is also a new agricultural side to 'trade'. We read, for example, that fish farming for personal or family use is not 'trade'. An investment in new stock also is not trade, and *zakāt* is not payable.[396] There must be a profit from sale. The same is true for growing sugar cane.[397] This position sits somewhat uneasily with the usual liability levied on grain (rice), because fish farming and the growing of sugar cane are more often than not engaged in to produce a surplus for sale. Of course there are cases where this is not so, but they are exceptions. An example showing the actual inconsistencies comes from an NU *fatwā*[398] of 1987. In this case rice production had been considerably increased through the use of fertilisers. The price of the fertiliser was not a large element in the total production costs. In other words, it gave considerable increase at relatively little cost. Could the rate of *zakāt* then be increased from the usual 5 per cent to 10 per cent? The answer was yes, because fertiliser (unlike water) is not an essential for growth: it is a means for increasing production and hence profit, and the

consequence, therefore, is the higher rate. Surplus for sale is obviously 'trade', in this case in rice; it is difficult to see why the same rule does not apply to fish and sugar, especially the latter which is a plantation crop often grown by cooperatives. In the NU view, however, cooperatives are not *zakāt* payers, so that liability falls back on the individual members.[399] This issue is pursued in chapter 5 in the section on money and money contracts.

We are now in a position to identify the two main problems in contemporary *zakāt*. The first and most obvious is the issue of capitalisation. Both Persis and Muhammadiyah are either reluctant to address it or oppose it, at least without donor permission (above). The NU also takes the same position.[400] The second is the method of collection. The new legislation (above) is not a break with tradition, indeed in some ways it repeats the *ʿāmil* (agent) of mediaeval Islam in a revised form. The NU certainly recognises this, because in a *fatwā*[401] in 1981 the authority of the state in this matter was affirmed. The authority was, as one might expect, *Iʿānat aṭ-ṭālibīn*, which, in matters of *zakāt,* seems to be the preferred source.

There is one final comment: modern forms of money in paper, cheques, stock and bills of exchange are of value equivalent to the appropriate exchange in gold and thus subject to *zakāt*.[402] This is a simple equivalence—not, as in the past, a matter of *qiyās*, where a specific *ʿilla* had to be shown: 'paper money is a thing and there need not be some transfer'.[403] However, this is not sufficient to deal with modern forms of money (e.g. pensions, superannuation). A simple equivalence just will not do (see chapter 5, on money and money contracts).

NAIK HAJI (HAJ)

The ritual obligations that make up the duty of pilgrimage (*naik haji*) are explained in detail in all the Indonesian sources.[404] But the actual practicalities leading to a correct *Haj* are something else; two in particular, funding and travel to Saudi Arabia, are important and difficult.

Funding

The funding of the *Haj* has been of concern to governments in Indonesia from colonial times onwards. The concern was partly political and partly financial, and in the NEI various regulations were promulgated over the years under which pilgrims had to show financial competence and also to provide for their families in their absence.[405] Postwar Republik Indonesia acted early to control the *Haj*, with a special section of the Ministry of Religion being put in charge in 1949. Applicants had to apply to the Ministry, and this element of control has been maintained. The pilgrimage is in fact controlled by the state, which issues the necessary medical certificates, receipts for travel and accommodation expenses, and the permit (*Haj paspor*) for travel. Effort is made to cut out financial exploitation, but by the nature of things this is very

difficult. No government has ever succeeded in dealing with the financial problem of peasants selling land to pay for the pilgrimage and then ending up destitute, either in Saudi or back in Indonesia. One constantly hears accounts of this and, while it is difficult to know exactly what is happening, there is no doubt that a number of devices to raise funds are being used. This brings us to two NU *fatāwā* on fundraising.

The first[406] is on '*arisan haji'* and its legality in *fiqh.* An *arisan* is a group of individuals who club together to pay a set amount at a stated time into a common fund. One member, chosen by lot or by some other agreed method, takes the aggregate, which he or she is then bound to repay (less the contribution) at an agreed rate and at specified times. The main problem for the members is default in payment, and this raises the legality of the whole arrangement in *fiqh*. The basic questions are: (a) is it a company or a partnership or neither? and (b) is the organiser a manager or an agent? There are no clear answers or equivalence in *fiqh* to what is essentially a revolving credit association. The NU *fatwā* is equivocal and does not discuss the issue. It merely says that opinions differ but that funds generated in this way can be lawfully used for *Haj.* The sources cited include the *Nihāyat al-muḥtāj,* and ʿAbdullāh Shārqāwī's *Ḥāshiya ʿalā sharḥ at-taḥrīr,* but in both cases the passages cited are not persuasive.

This result can be compared with two slightly earlier *fatāwā*. The first,[407] from Muhammadiyah, declares the practice illegal, at least so far as using funds for the *Haj* is concerned. It relies on a *ḥadīth* which appears to be a version taken from Muslim forbidding borrowing. In the discussion that follows much is made of the principle that funds for the *Haj* must be free from burden (here the liability to repay a debt). In addition, the actual process of allocation, by lot, carries within it its own seeds for dissension.

The second *fatwā*, this time from the MUI (DKI Jakarta),[408] considers the issue in more detail, and the following passage sets out the reasoning.

> 1. The principal condition to undertaking the pilgrimage is the possession of funds to pay for the return trip from one's home nation to the holy land and back as well as the cost of maintaining one's family which is the responsibility of the prospective pilgrim whilst away. It is impermissible for Muslims to burden themselves in this way without the instruction of Allah or his Prophet:
>
> > 'and undertaking the pilgrimage is an obligation to Allah upon those who can afford to complete the journey (S III:97)'
>
> 2. Fulfilling the obligations of pilgrimage by borrowing money is forbidden by the Prophet Mohammed:
>
> > 'A friend by the name of Abdullah Bin Abu Aufa said: I asked the Prophet about a person who was unable to afford the pilgrimage and whether he may borrow money to undertake the pilgrimage. The Prophet replied "No!'" (Haddith related by Imam Al-Baihaqui)

The person who is given the price of the pilgrimage is under no obligation to accept the gift according to the books of *fiqh.*

3. A raffle for the pilgrimage represents an action which may give rise to hatred and enmity both for the participant who wins the raffle and other members.

'The Prophet forbids trading (exchange of interests) in bad faith.'

'Actions which may attract bad fortune are prohibited.'

'The spirit of a believer is dependent upon a debt until the debt is paid in full.'

4. Support or funds to undertake the pilgrimage must be wholly free from any burden which may contaminate them.

'Truly Allah is holy; he does not wish to receive anything which is not also holy.' (Haddith related by Muslim and Turmudzie)

5. Undertaking the pilgrimage with support/funds gained through a pilgrimage raffle is not in accordance with Islamic law and must be avoided.

In the same year, 1979, the national MUI issued an opinion[409] for the Haj Department of the Ministry of Religion entitled 'Essentials in making the Haj'. The opinion is confined to the practical social issues that need to be addressed by intending pilgrims. The opinion summarises them in short form as: a Muslim (man) may make the pilgrimage when his health, body and soul are in a proper state; he may not undertake the pilgrimage if this would involve abandoning his family responsibilities. To this can be added a further admonition,[410] which says that the *Haj* is only one of the Five Pillars and Muslims in Indonesia must be mindful of the problem experienced by those who have not been able to make the annual quota. To this one might add an NU *fatwā*,[411] which weighs the pilgrimage equally with giving to charity. Not making the quota is not blameworthy,[412] an interesting recognition of the power of the state in absolving individual liability.

This emphasis on financial responsibility, heavily promoted by the state, brings us to two final *fatāwā* on funding. The first, from the Muhammadiyah,[413] is a short statement declaring borrowed funds unlawful for *Haj*. The authority is the *ḥadīth* cited immediately above (Muslim). The second, more interesting, is an NU *fatwā*[414] on the common practice in Indonesia of civil servants agreeing to deductions being made from salary and put aside as a credit to a *Haj* fund. The NU had no difficulty in finding this a lawful practice. However, the authorities cited in this decision are somewhat surprising. They are the same texts, with the same page numbers, as in the preceding NU *fatwā* on the lawfulness of *arisan* credit (above). As with that

citation, the authorities are inconclusive. The real point, however, is that the transactions in the two *fatāwā* are quite different: a revolving credit association on the one hand, and on the other a government-sponsored savings scheme by way of monthly withdrawals from salary. There is no link between the two unless one can show some commonality in *fiqh*. The only possibility here is some form of contract, but this would almost certainly fail in the case of *arisan* because of the element of gambling (see chapter 5, on '*gharar*').

Travel

There is no problem about the correct time to perform *Haj*. The times are set by the Saudi government, and there is in fact an NU *fatwā*[415] which says that these must be followed even if they conflict with one's own calculations. On the same point, the precise times set for various parts of the rituals are also set by the Saudi authorities and must be adhered to[416] even if there is minor variation according to the Shāfiʿi' *madhhab.*

The major problem is ascertaining the proper *miqat* (Ar. *mīḳāt*)—that is, the place where those who enter the *haram* (the sacred area of Mecca and Madina) must be in the pure or 'consecrated' state and wearing the dress (*iḥrām*) appropriate to the *Haj*.

Until recently Southeast Asian Muslims would arrive by sea in Yemen. Their *miqat* was Yalamlam to the south of Jeddah. This is the correct place and is specified as such in all the standard texts. At that place they would then put on the *iḥrām*. Air travel, however, now requires the aircraft to land at the new airport to the north of Jeddah. The distance between this and Mecca is less than that prescribed in the *aḥādīth*. There are two problems for Indonesian pilgrims—when and where to put on *iḥrām* dress. This is compounded by Indonesian government insistence (since 1979) that all pilgrims go on properly organised flights. The flying time is about eight hours. If a pilgrim does not commence the *Haj* at the correct place in the required state of purity, the penalty is at least a fine (*dam*), at worst the possibility of a flawed pilgrimage.

There are two *fatāwā*. The earliest (by just a few weeks) is from NU,[417] which decided that the pilgrim should put on the *iḥrām* on boarding the aircraft or, alternatively, put it on as the aircraft enters the designated region. There is no extensive discussion, and the authority given, *Bughyat al-mustarshidīn*, merely repeats the Shāfiʿī rules which prove nothing in this context.

The second *fatwā*—or, rather, two closely related *fatāwā*—is from the MUI[418] (1980–81) in response to a request from the Ministry of Religion, itself under pressure from the *Haj* organisers and carriers who were concerned about the practicalities of *iḥrām* in air travel. The response from MUI was remarkably swift[419] and is in several parts. It consists, first of all, of citations from al-Haytamī's *Tuḥfat al-muḥtāj*, stating that pilgrims from

Yemen could take Jeddah as the place of *miqat*; this is supported by a further reference to the *Iʿānat aṭ-ṭālibīn*, where the same position is adopted. These references are in fact sufficient for the purposes of the question, but MUI goes on to take the Mālikī and Ḥanafī view that where there are two possible places for *miqat,* the nearer to Mecca is acceptable. Not only is this unnecessary to the issue, it also has the potential to arouse debate on *talfīq*. However, the MUI then goes on to cite the Ẓāhirī view that where the place of *miqat* is 'far', pilgrims may put on *iḥrām* clothing at any point they choose. As Professor Mudzhar comments,[420] this part of the MUI *fatwā* is not taken directly from Ibn Ḥazm but is '. . . lifted from Sayyid Sābiq's *Fiqh al-Sunna*'. The intention is clearly to avoid an actual measurement on the ground; whether the new airport is in fact less than the distance (in miles) set out in al-Anṣārī's *Fatḥ al-wahhāb* is debatable for a valid *miqat.* The Ẓāhirī option, therefore, is a failsafe for the literal-minded pilgrim. As it happens, however, the Ẓāhirī reference is in practice otiose. Almost all Indonesian pilgrims change into *iḥrām* at Jeddah airport.

CONCLUDING REMARKS: *FATĀWĀ* AND THE STATE

It is ironic that the last of the Five Pillars should have to be approached by way of invasive state intervention as to means. Even to get on the *Haj* quota, while one is qualified in every other way, is problematic. These *fatāwā* demonstrate, as no other source can, that the state is the decisive presence. To repeat a quotation from the beginning of this chapter, '. . . the human reception of the divine . . . is difficult'. This leaves the individual Muslim in 2001 in an extremely difficult position. He or she is a citizen of an intrusive state bent on control of religion, including the most personal obligations, such as to perform one's obligations in prayer.

There are two sorts of tensions at play—that internal to Islam, and that between Islam and the state. The disagreements between Persis, NU and the Muhammadiyah, while they result from distinct *methods* of argumentation, also share a common base, which is that Revelation is primary. The respective arguments are mutually intelligible; there is a common understanding in interpreting the Five Pillars. Anxiety is a common thread in all of *ʿibādāt*. On the other hand, the state invades religion by setting its own criteria. The tension here is between Revelation and the state. Each has its own source of legitimacy—from God, or from the Constitution (not God).

The tensions are not equally distributed. The state successfully insists on its own position on matters of times, travel, calendars and the capitalisation of money. The internal Muslim position is largely preserved in *shalat* and, to some extent, in *shiyam*. However, these are not closed classes, and it would be a bold commentator who held that they were.

3

Women: status and obligation

INTRODUCTION: PRESCRIPTION

The status of women in Islam is a matter of grave concern in all Muslim societies,[421] and Indonesia is no exception.[422] Naturally enough, much of the debate is piecemeal and, while the form this takes varies widely over time[423] and as to place, there is one constant thread running through it. This is that the focus is always prescription(s)—the setting out of personal status based on gender and the ascription of duties appropriate to that status.

There are four sources of prescription for Indonesian Muslim women. These are (i) the *fatāwā*, the subject of this chapter, (ii) the laws of the state, (iii) the great mass of instructional literature continually pouring forth from the Indonesian publishers and the other media, and (iv) the Friday sermon (*khuṭbah*). We need to pay some preliminary attention to the last three because they are related to the *fatāwā* sources.

Laws of the state—*hukum*

The Indonesian legislative system is complex, and there is considerable uncertainty in many instances as to the precise meaning of any promulgated laws.[424] One of the reasons for this is the variety of the forms of prescription. The basic text is the 1945 Constitution, Pancasila (at least until recently), and then a bewildering array of legislative/bureaucratic instruments. These include laws (*undang-undang*) of the People's Assembly, Government Regulation (*peraturan pemerintah*), Presidential Decisions/Instructions (*Keputusan/Instruksi Presiden*), Ministerial Instructions (*Instruksi Menteri*), and Departmental Circular Letters (*Surat Edaran*). The order in which I have given these forms indicates a scale of descending competence, but the scale of descent is only in theory; the Circular Letter, for example, while not publicly available and technically only for internal departmental use, can be and often is decisive in stating

what a law means. Basically, we have a system of executive orders where important powers of law-making are delegated to functionaries. A statute (*undang*) is typically vague and general. We do not know its meaning except in the bureaucratic formulations that later appear. The *yurisprudensi*, the judgements of the various courts, are not very helpful. Typically, detailed reasons for decisions are not given in full, if at all. There are of course exceptions to this statement, but it remains generally true.

In short, prescription for women in the laws of the state is at best problematic and more usually imprecise. We have two examples, the Compilation of Islamic Law (1991) and the Marriage Law (1974). For the Muslim woman both must be read together, because the latter heavily qualifies the former.

The Compilation has been mentioned earlier (see Introduction), but only from the point of view of background to Syariah reform and reformulation in Indonesia. For our purposes here, we need to look at its provisions in a little more detail. Part I, the longest part (Arts 1–70), is on marriage, and is concerned with the following subjects.

First, the general principles of marriage: the scene for women is set in Art. 4, which says that a marriage is valid if 'created according to Syariah in accordance with the Marriage Law of 1974'. The clear assumption is that the 'Muslim woman' is also an Indonesian citizen. Marriages to be valid must be registered, and non-registration means that the marriage will not have the force of law (s 6(2)). There is no definition of 'validity', but it is clear that the appropriate certificate 'proves' a marriage. This is quite in keeping with the bureaucratic definitions of status in Indonesia—one of the more unlovely aspects of the Dutch colonial inheritance.

Second, capacity to marry: the ages of those entering marriage must be those set out in the Marriage Law. Consent is required but the Muslim woman must have a *walī* (guardian) who is a male relative (in degrees of near and far as determined by Syariah). This requirement is not a state prescription as such but a reformulation of the Syariah into simple terms. The same is true of the required marriage payment (*mas Kahwin*), except that dispute over type and value is now a matter for the Religious Court. This is a formal advance in favour of the woman in the sense that a state adjudication is possible, although the outcome is unpredictable. There is also provision for prenuptial agreement as to property, which allows each party an equal share to property accumulated during marriage. This is a well-known principle of Indonesian *adat* (*gono-gini*, *carian laki-bini*) and has in fact been approved in an early NU *fatwā*. Breach of a property agreement by the husband gives the wife a right to claim for divorce.

Third, marriage itself: while the possibility of a man having four wives remains, it is severely circumscribed by the Marriage Law, which requires the consent of the first wife plus a demonstration that the husband can maintain two or more families. The proceedings in this part of the Compilation are in the Religious Court. In short, the matter is part-determined by

the secular law. However, the husband may appeal in the Religious Court if the wife withholds consent. The degree of relationship within which marriage is forbidden is a mixture of *fiqh* and the prohibited degrees set out in the Marriage Law. On the other hand, mutual obligation (duty) of one party to the other seems to be in *fiqh* terms alone, but where property is involved equal ownership and division is the operative principle, although this is not always clearly stated.

Fourth, divorce: the rules as to *talāq* are retained but the Religious Court must be involved and it is the court which gives permission to the husband to declare *talāq* after the appropriate enquiries have been made. The court may refuse a husband permission. A wife may petition for divorce (for cruelty, lack of maintenance and absence for defined periods). The financial consequences of divorce are those specified in *fiqh*.

Finally, inheritance: the Compilation reproduces the *farā'id* in a shortened form. The only variation is a provision that where the estate consists of land less than two hectares in area, the land should be retained intact and used for the interests of all beneficiaries. This is a concession to agricultural realities and is a common feature of the Indonesian *adats*. The purpose is to prevent fragmentation.

The idea that there must be a common standard of law for all Indonesians lies behind the Marriage Law of 1974. It has succeeded to some extent; there is now a common set of rules in such matters as minimum age, contracts, and rights and duties of spouses. While the provisions of the law do not apply in their entirety to Muslims, the law has placed the Syariah firmly in state control. The all-important implementation (and without a minimum efficacy there is no 'law') is in secular principle and organisational forms. The Compilation can be seen as a logical next step and, when taken with the Law on Religious Justice of 1989,[425] demonstrates just how subject the Syariah has become to the secular power. The working of the religious courts is in the hands of various ministries of which the Ministry of Religion is but one, though the most important. The Compilation, while approved by the '*ulāmā*', is not issued under their authority. Instead it originates as a Presidential Instruction 'in the name of the Pancasila'. While Pancasila may or may not remain fundamental to the ideology of the Indonesian state today, it is clear that the authority of the text is from the state and not from Revelation.

The implications for prescription in respect of Muslim women are clear. Insofar as administrative means to 'secularise' the *fiqh,* this is the clear intention. State prescription has fundamentally changed its nature. It has become a matter of codes and, most important, of bureaucratic regulation; the Syariah is now a part of the positive law of the Indonesian state. It is this, and not *fiqh* alone, which determines personal status. The Muslim woman is also a citizen of the state of Indonesia and, as we shall see, it is the pendulum balance between these which determines female status and obligation.

Instruction books—the *panduan* literature

Panduan means 'guide', and the reference here is to the large industry publishing hardbacks, paperbacks, pamphlets and instructional texts on religion. Many—certainly the majority—are directed to women, and set out the ideal duty and conduct expected from and required of a proper devout Muslim woman. I refer to this as '*panduan* literature' because this word occurs very often in the titles published. Of course the phenomenon is not confined to Southeast Asian Islam. Instructional literature (*adab*) for women has a long history in Islam, and with the spread of the print revolution from the late 19th century, all parts of the Muslim world can show examples. The time is significant—'high' imperialism, but also the time at which positive Muslim responses began to be written and circulated. As we have seen, much was couched in the politics of institutional reform and anti-colonialism generally. However, an overemphasis on this material tends to detract from the individual dimension. It is easy to be seduced into formulist descriptions of 'Islam and change' and thus to suppose that an explanation has been provided.[426] Reading the instructional literature of this century is an alternative way of approaching 'Muslim' reform. As Professor Barbara Metcalfe has shown for early 20th-century British India,[427] it treats the woman as 'person'. The context of reform at that time was colonial domination. The modern context is the Muslim woman in the secular state. Essentially there is no difference. It is the secular laws that determine obligation, and the point of the instruction literature is to show duty from within Islam. The duty is not really an alternative duty. The woman is both Muslim and citizen. She is also a wife and a mother, often the breadwinner, and even a member of government. The problem is to get some complementarity between most or all of these.

The key, as we saw in chapter 2, is a public respectability, a persona which is socially the norm or even better than the norm. The woman must be ideal in real life, and the ideal is in the prescriptive of 'pure' Islam. The fact that local customs (*adat*) are also part of the female persona is ignored in the *panduan* literature. These are heavy burdens—to succeed as an ideal woman, as defined in 'pure' prescription. How is it to be done?

There are a number of answers that come out of the forms of *panduan* literature where levels of sophistication and, thus, audience vary widely. There are thousands of titles, the vast majority of which are short (70–100 pages), have limited print runs and can be classed as ephemera. Typically, they cost about US$2–$3, though larger works are more expensive. They are produced by small, local printer-publishers, many of which are also ephemeral, but major publishers (e.g. Mizan, Pustaka Amani, Gema Insani) also publish these books. Print runs tend to be small, although there are many examples of multiple reprints. The printing itself is of reasonable quality (both Roman and Arabic script) and occasionally there are illustrations, ranging from simple line drawings to good photographic reproductions.

These are mostly paperbacks with brightly illustrated covers. One can easily tell that the subject is about women because the covers will have a heavily idealised female portrait, often with *hijab*/*jilbab*, or with flowers. Flowers are particularly popular where sex is the subject; pseudoscientific abstractions of ovum and sperm are commonly used for the latter as well. An interesting feature, from the 1970s at least, is that copyright resides in the author. General bookshops as well as stores specialising in religious material carry a huge and constantly changing range of *panduan* literature.

There is a wide variation in degree of sophistication in the *panduan* literature.[428] To an extent this is understandable in terms of different audiences. Very short, basic texts are directed to young women who have only a basic education. The vocabulary is simple, sentences are short, and the subjects (e.g. ways to pray, modest behaviour and dress—see below) are ones with which all Muslim girls and women already have some familiarity. At the other end of the scale we can find longer books, using more sophisticated language including citations from the Qur'ān and *āḥādīth* and dealing with a range of more complex issues. These are intended for the better-educated and older woman.

A good way of assessing relative degrees of sophistication is to look at the material sources in each of the various *panduan* genre. The majority are based on simple citation from Qur'ān and occasionally some *āḥādīth*. The Indonesian element consists of translation and commentary. The Muslim woman is thus defined as pure in thought, word and deed. This is summed up as piety (*shalihah*). The method is to state and explain Qur'ānic prescription so that the reader may know what true piety is and what must be done to achieve it. The method can hardly be called intellectually challenging; for this we have to turn to a second genre—the *panduan* book that relies on summaries and/or translations of argument from non-Indonesian sources. While the motive is still prescriptive, we also find argument to sway the reader's mind. This is a different way of proceeding. While these *panduan* books are in a minority they are also directed to an important minority population—the better-educated for whom belief and practice is to be complemented by rational conviction. For example, the work of Maududi is widely quoted, and there are translations from Arabic and Farsi materials. Leaving aside the accuracy or validity of the actual translations—a subject yet to be investigated in detail—at least this material is from within Islam, and the authors are Muslims writing for a Muslim audience.

More problematic, and possibly a separate genre of *panduan*, is the increasingly common practice of citing from non-Muslim authors to demonstrate or prove points that the Indonesian author wishes to make. The point is usually a negative one, to show that the position (*kedudukan*) of women in Western societies is unfavourable when compared with that of Muslim women. For example, in the general category of women and sex (in Islam/Muslim society), Roger Scruton's *Sexual Desires*, WEH Lecky's

History of European Morals, St Augustine's *The City of God*, Germaine Greer's *Sex and Destiny* are just some of the authorities cited, alongside works in Arabic and Indonesian. The interesting feature is that the Western works are read for scientific information and, more strikingly, for their criticisms of their own societies or cultures. The Arabic and Indonesian works, on the other hand, state the Muslim moral position as an absolute. The moral superiority of the Muslim position on women is made quite clear to the reader through emphasising the problems in non-Muslim societies by using evidence from those societies themselves. These latter are deficient because, in spite of science and prosperity, they are morally bankrupt, and *leading thinkers from within that society actually confirm this.*

The *panduan* has certain key words: *wanita* is the general class denoting a status (see below); *shalihah*, pious with a range of reference; *hijab/jilbab* as signifiers of propriety or identity; there is a further complex of terms—*nilai* (evaluation), *nasihat* (advice) *ciri* (characteristic) and *masalah* (problem)—which set the tone for the *panduan* genre. There seems to be a certain negativity which can be seen in quite a few of the *panduan*. For example, there is a book entitled *Ciri dan Fungsi Wanita Shalihah* (3rd edn, 1996) by Abu Muhd Rasyid Ridha, published in Solo. The references are wholly to Qur'ān, *āḥādīth* and contemporary Indonesian commentary. The whole question is: what is a pious woman? Beauty is not the answer. While a woman may have an outer beauty, there is a false beauty as well as an ideal beauty. The real characteristic of piousness is obedience (*taat*), first to God and then to the husband. Flowing from this are the (natural) functions, servant of God, mother of the household and educator of the children. Problems can arise only when the wife is disobedient to the husband and refuses to wear *jilbab*. It cannot be a proper rule for the pious wife to rule or administer society or the state, and a career (*karier*) in the Western sense is not an option. The key signifier, and one which appears to underpin the whole of piousness, is the wearing of the *jilbab*. There are other books that make the same point; one is even called 'Dangerous Fashion' (*Bahaya Mode*).

There is a final class of *panduan* literature that is to do with the rules surrounding menstruation (*ḥaiḍ*), which has ritual implications for Muslims. These are small handbooks explaining the rules and giving extensive tables of dates, with explanations of what may or may not be done ritually or socially. The emphasis is on purity and certainty, and this is the characteristic aim of all *panduan* literature.

The sermon— *khuṭbah* (*khutba*)

The Friday sermon given by the *imām* (or *khaṭīb*) in the Indonesian mosque is now no longer the only form of *khuṭbah* in contemporary life. It remains of course fundamental to Islam, because the mosque is not government space despite the best efforts of all regimes to make it so.

The forms of *khuṭbah* in contemporary Indonesia are:

- the Friday sermon in the mosque, now often taped/recorded for sale;
- a printed/cyclostyled version distributed for wider circulation; this is common in the larger mosque towns, especially in Aceh;
- published collections in book form for sale in shops dealing in Islamic literatures;
- the TV/radio *khuṭbah*, usually early morning programs, though at special times of the year (Ramaḍān, Prophet's Birthday, Haj season) more frequent programs are given by TVRI.

These forms have to be considered together because, while all are '*khuṭbah*', each has its own particular character. The remarks that follow are very preliminary and relate only to prescriptions affecting women. As might be expected, the main subjects are (socially acceptable) modesty, basically about dress, and the duties of women, especially as wife and mother. The *karier* (career) woman is discussed in this context. I must add that direct references are not usual, but the implied messages in each form do set a prescriptive agenda from within the ideology. It may seem strange to reduce 'Islam' to 'ideology' but in contemporary Indonesia the *khuṭbah* are as much the latter as the former. The Islamic space—here the space for Muslim women—is both in Revelation and in the late 20th-century social reality. This is the tension in the *khuṭbah*. When we listen and read carefully, the tension is obvious. *Fatāwā*, on the other hand, are more considered because they are later in time. The *khuṭbah* is immediate—this is always true. Can a *khuṭbah* be planned to a policy? The answer has to be yes; the 'Islamic space' is itself open to debate whatever the idiom. But the idiom can be primary because it sets the agenda, which is already in the expectations of the audience. There are three such spaces.

The Friday sermon

The place is the mosque, a sacred space, of 'earthly aspiration and divine invitation'.[429] In Indonesia the buildings themselves reflect this, but they also show a synthesis of styles reflecting Indonesian cultural traditions in architecture.[430] The same synthesis is reflected in the congregations simply because many mosques are associated with particular Islamic groups (NU, Muhammadiyah and so on). The *khuṭbah*, therefore, is directed towards expressing one particular version of Islam. In other words, it can be understood properly only in terms of the expectations of its particular audience. The mosque and the *khuṭbah* are socially and even politically identified, and the *khuṭbah* is the public expression of a specific identity.

The *khuṭbah*, therefore, despite its apparent simple form (passage from Qur'ān plus explanation/comment) is a complex action. It is drama and performance. The languages will include Arabic, Indonesian or one or another of the important regional languages (e.g. Javanese, Acehenese)

with a constantly varying register. Tone and intonation are as important as vocabulary. Much can be said, and much is not said but it is understood by the audience. It is here that the idiom is crucial. If one hears a *khuṭbah* and later reads a version, either a summary or a full version, the latter can only be understood in terms of the former. It is incomplete. However, a taped or recorded version is much more satisfactory: at least part of the theatre of the *khuṭbah* is preserved.

Printed/published collections
As just indicated, these are less than satisfactory. Of course they contain information, views, interpretations in a more or less permanent form. They are valuable at least as aides-mémoire. However, it is not usual to find sustained argument. The only possible exceptions are those *khuṭbah* which comment on or express an opinion about some aspect of government policy. Another example is the practice of giving *khuṭbah* commenting on important anniversaries—for example, celebrating National Education Day, National Awakening Day, Pancasila. Here the occasion is an opportunity to comment on the social or political function of Islam in the contemporary state. These *khuṭbah*[431] are designed to be read and discussed rather than heard.

The TV and radio khuṭbah
This is a relatively new form, and with it we return to the performance idiom. Tone, intonation, language and gestures are all present. The audience at home (early morning) is being treated to a performance. Even the advertisements that come on do not break the flow. Without exception they all have an Islamic reference, often of a witless vulgarity. Has the TV studio then become a sacred space, at least for the duration of the program? Another point is that women are almost always on screen in these performances. They may be asking or answering questions, or saying prayers or performing *nasyid*. The roles seem to be defined but as players in the drama they are costumed appropriately and conduct themselves with due decorum. The image is of the pious Muslim woman.

These comments on the three alternative forms of prescription are, of course, very preliminary and general. However, they suffice to show the range of instruction and its various levels: prescription is multilayered and, if successful, quite overwhelming in scope and penetration. To them must be added the thousands of informal women's groups and movements that meet at regular intervals for reading and discussion. Many are highly structured, with committees, financial resources and a vigorous social life as well. We tend to underestimate the latter; the social life is always conducted within a didactic framework which is made up, at least in part, of the latest *panduan* book, *khuṭbah* and the politics of laws as they affect women.

STATUS

'Status' means one's capacity to incur obligation as defined by law, which for Muslims is the Syariah. Certain classes of persons are denied status: children, the mentally deficient and non-Muslims in some respects do not have a full status, and women, whose capacity to act is circumscribed, though not totally denied. There is a particular Indonesian complication that must be borne in mind. As we saw in the Introduction, the history of Islam in Indonesia is complex. Indonesian Muslims as 'Natives' had the capacity to enter into obligations largely determined by *adat*. While the Syariah was recognised to some degree in 1882 (revised in 1937), the source of personal obligation was never clear. That has improved in post-Independence Indonesia, where a formalised Syariah system is now in place in the religious courts. However, the personal status of women in relation to other laws of the Republik Indonesia is somewhat obscure (see above), in particular in respect of the Marriage Law of 1974. The *fatāwā* we now go on to describe date from the 1920s, the time of *adat*, to the present, the time of the new state laws. The *fatāwā*, while giving answers internal to Islam, must therefore be read in these contexts, as reactions to the respective secular state prescriptions.

Wanita—general social propriety

A woman has an incomplete capacity in several aspects merely by reason of gender. We have already seen examples of this in the context of ritual purity, but we focus now on a number of aspects of what a woman may or may not do or should do in social life. 'May' and 'should' are both *mubāḥ* if we accept the latter as 'highly charged' (see above) in contemporary Muslim societies. 'Should', therefore, indicates a boundary, and there are a number of *fatāwā* from our sources which show that the boundaries of *mubāḥ* are variable.

We can start in the 1930s with a question: what is the proper form of greeting between man and woman? This question is not simple for any society at any time; it always has loaded contexts. In this case the context is Islam in the colonial Netherlands East Indies. An NU *fatwā*[432] of 1935 puts forward the arguments: it is meritorious for a man to greet his female relatives, servants or old women (who 'do not inspire romantic feelings'), or a well-behaved group of women. It is reprehensible when done to unaccompanied women, particularly when they inspire romantic feelings. It is permitted when the woman is with a group of (presumably respectable) men. The main authority is the *Iʿānat aṭ-ṭālibīn*. This is a quite straightforward view, but another more complex version can be read in a Persis *fatwā* from the same time.

It is a long *fatwā* by Ahmad Hassan,[433] and in it he deals with the head covering (see below) and 'social interactions,' which include greetings. His view is that men must greet a woman when arriving in her home, citing

S XXIV:27–28. Both these verses are actually on asking permission to enter a house. As for men greeting women in public he is less certain: a verbal greeting might be offered, but the circumstances might well be inappropriate and give rise to adverse comment. More serious is the possibility of eye contact being made, an action which is forbidden (S XXIV:30–31). From this follows a set of general recommendations to the effect that women must efface themselves, by for example going to the side, the back or behind a partition, except in cases of serious necessity. The latter is not explained except with reference to women's duties in time of war. These restrictions obviously forbid contact in public, such as shaking hands. Ahmad Hassan deplores the practice, even though it occurs within the Islamic movement. In fact, he asks for evidence that permits the practice.

Not quite the same line is taken in a modern Muhammadiyah *fatwā*,[434] where the question is: may one congratulate a woman by shaking her by the hand? Various *āḥādīth* from Mālik and Nasā'ī are cited to show that touching a woman is not permitted. However, the *āḥādīth* are not unequivocal, and one 'may' do it but at best it is *makrūh.* The members of Majlis Tarjih do not shake hands with women.

The borderlines of 'may' and 'should not' are clearly in evidence; the social distance between the two is the charged area. We can illustrate this by taking two *fatāwā*, one from the NU[435] in 1991 and a continuation of an earlier Persis *fatāwā*[436] from the late 1930s. Both are concerned with the formal greeting, *assalāmu alaikum*, and the formal reply, *wa'alaikum al-salām* in respect of women. For Persis the greeting from the man and the reply from the woman is acceptable, provided the intention is a 'benevolent prayer'. The NU, on the other hand, was addressing the issue of whether one should reply to the first *salām* broadcast over the radio (yes, if the speaker is live and not recorded), and whether any particular form of greeting to the women listeners was necessary. It was decided no, because it was not in accordance with the practice of the Prophet. A number of *ahādīth* from Bukhārī are cited but on the general point forbidding innovation. These general comments lead us now to more specific areas of social incapacity.

Head covering, clothing generally

All sources agree that a woman must be modest (S XXIV:31), but there are differences of opinion as to how this is to be achieved. As so often, the best place to start is with two Persis *fatāwā.* The first[437] is directly on head covering. Ahmad Hassan deals with covering in four circumstances—within the house and in the presence of her family, for prayer outside the house, for conversation with an unrelated man in her house, and generally outside the house. For the last three a covering must be worn, except that old women 'for whom there is no chance of marriage . . .' may go out without it. The authority cited is S XXIV:31 and 60. So far this merely repeats the classical position. However, the *fatwā* then goes on to deal with a number of objections to the rule. The first is that the head cover (*tudung*)

originated in Greece, was adopted by the Arabs, and is not in fact recognised by Islam: '. . . it is merely a museum piece . . .'. To this the Persis answer is that the origin is not relevant: Islam does in fact command that it be worn. Additionally, native Indonesian costume must be worn, though not specifically ordered in Qur'ān. Such clothing is certainly not a 'museum piece'. This is an interesting equivalence because it equates the head covering with the rest of a woman's dress. It is part of the normal whole for a Muslim woman. In this sense, 'should' cover means 'must' cover; it is obligatory from a natural use, as well as prescribed.

The second objection is that head covering is from the past, when women needed its protection as a guard to modesty, but it is now no longer required for that purpose. The answer to this is that the necessity is today (i.e. 1930s–40s) even greater than in earlier times. As the following passage shows, Ahmad Hassan had a somewhat pessimistic view of the modern woman in Indonesia and elsewhere:

> If it is true that women in the past covered themselves for protection, women now need protection more than ever for never in the past was a war waged on the honour of women like it is today. Every bad thing which could be done by women is today done by the majority of women.
>
> It is true that women today are skilled in reading and writing but this has not removed them from evil as religion does. In Europe women are generally skilled at reading and writing and the rest but we can be sure that there is not one such woman with her honour intact except a portion of those women who follow their religion in practice, be that Christianity or any other religion.
>
> I confess that it seems that wearing the head cover has no advantages—it cannot keep its wearer from evil. Its usefulness is that to wear it is to follow the commands of Islam. Its greatest use is that women who wear the head cover as commanded, are reminded that they are Muslim women who must guard their honour.

In other words, to guard a personal morality is to be a Muslim as distinguished from a non-Muslim woman. It is a duty to do this and, it follows, it is a duty to follow the dress rules that accomplish the purpose. 'May' in the sense of choice is not an option, even 'should' is too weak; 'must' is the operative verb. At the same time, the head cover, as such, is not going to prevent evil: '. . . if you want to be bad you will be bad . . .'. All that can be done is to insist on the proprieties in the hope that moral damage can be minimised.

The two arguments, therefore, are from natural usage and the (Muslim) moral imperative. This *fatwā* (and the second,[438] which is a short form of the first) really sets the agenda for today. The arguments are exactly in the same terms, and 'may', 'should' and 'must' are variously defined in natural usage and moral imperative. The latter is constant, while the former varies in time and circumstance. It is time and circumstance which determines the morality of the day and, while Ahmad Hassan's *fatwā* lays down the moral imperative, it is not a sufficient on its own.

Of what does sufficiency consist? A Muhammadiyah answer demonstrates the complexities. The *cadar* is rejected[439] on the ground that there is no special mention of this form of dress, but the head cover is accepted on the authority of S XXIV:31. But this is not the end of the matter; the Muhammadiyah reinforce this position with a photograph of a young woman wearing a head cover. It illustrates exactly the verses in S XXIV:31, '. . . draw their veils over their bosoms . . .'. The point is that we have a photograph demonstrating the correct dress. It is a model of what *should* be the correct fashion, not the *bahaya mode* (dangerous fashion). This is the only instance of a photograph in the *Tanya-Jawab Agama*; there is no other. Strictly speaking it is a representation but, as we saw earlier (see chapter 1), it is permissible for purposes of instruction. However, it does raise again the issue of *bahaya mode*, and the Majlis Tarjih has in fact further considered this aspect of clothing. In a recent *jawab*[440] the committee acknowledged that the style of clothing is a matter of personal choice but that fashion must not offend the *aurat* rules, and this applies to the design of clothing. A *jawab* given at the same time[441] reinforced this point. The *Aisyiyah*, the women's wing of Muhammadiyah, had a standardised batik dress decorated with letters which made up the *shahāda*. Was it permissible to wear the dress when one went to the toilet? The answer was found in *āḥādīth* (from Abū Dāwūd and others), reporting the behaviour of the Prophet in the toilet. In this place he refused to reply '*salam*' and he either took off or turned around his ring when performing his ablutions. The conclusion is that we are not allowed to mention the name of God when in the toilet and thus, by extension, to wear clothing on which is written the words of God. The *jawab*, however, is not totally conclusive; in the view of some '*ulamā*' the practice may be *makrūh*. The same rules apply to the disposal of old or worn-out clothing on which verses from the Qur'ān are imprinted. While such are intended to support the teachings of Islam, it is not permitted to use them for cleaning, particularly cleaning the toilet.[442]

These comments are applicable also to men's clothing. For example, short pants for male students are acceptable,[443] but only at the SMP level (junior high school) while they are still *mumayyiz*. This actually means long shorts—that is, reaching to the knee.[444] Finally we have an NU *fatwā*[445] from 1946, which permits women to wear army uniform because they have an obligation to the country in times of danger. They must be covered sufficiently according to Islam. This *fatwā* is obviously a response to the circumstances of the time and the authority cited, *Iʿānat aṭ-ṭālibīn*, while very general, is reasonably appropriate.

These examples of dress illustrate that the boundaries of social propriety for a woman are set by appearance. The dress image indicates piety, moral worth, and thus should (amounting to must) be complied with. It may be read as a statement of identity and is often seen as such by non-Muslim observers. On the other hand, female proponents of the *jilbab* very often claim a sense of comfort and security in the dress, not exactly as a moral

superiority but as a possession of a moral rightness. One is doing that which one should. The *fatāwā* express this and the variations in emphasis as well.

Women going out of the house

This is a complex issue. By its nature it raises authority, motive, obedience or disobedience, employment, necessity to go out, and means by which the woman travels. Each of these is dependent on time and place and it is these which determine how the woman should or may behave. There is no point in looking for an absolute certainty; the *fatāwā* demonstrate a range of positions, though from a common basis in 'Islamic morality'. That morality may be defended or enhanced or diminished by the acts of women.

To take motive first: the best motive to leave the house is to pray. But where to pray—in the house, in the open fields, or in the mosque (if the latter, in a general mosque or one for women)? Each has its own dimension, but the crisis of public choice really comes for the Friday *shalat* and for the *'Īd al-aḍḥā* and especially the *'Īd al-fiṭr*. It is public *shalat* which is debatable for women. Now, in the year 2003, women go to the mosque, but this was not the only alternative 80 years ago, and the *fatāwā* from this earlier period raise questions that might well be raised again.

One example is dress and appearance. We have already seen propriety defined in dress, and the Muhammadiyah actually has a photograph. Compare this with a series of NU *fatāwā* from the 1920s to 1940. The first,[446] from 1928, recommends that it is better for women who are not beautiful and who do not wear make up to attend the Friday prayer. It is preferable to staying at home. Again in 1940, the *fatwā*[447] on the subject recommended that at *'Īd* women pray together at home, but they may attend the mosque depending on age, beauty, whether fashionably dressed, wearing perfume or 'showing off'. These characteristics are all bars to attendance, particularly when slander is possible. It is certainly forbidden to attend without the permission of the husband or father (i.e. *walī*).[448]

While the language of the NU in the 1940s is not that of Muhammadiyah in the 1980s, their respective positions are the same. Motive is judged on appearance: 'showing off' is an affront to the public, male and female, the *mode* (style of dress) indicates the true motive (see chapter 4 on plastic surgery).

Given the possibility of going out, then, where to for prayer? The obvious answer is the mosque, and on this subject the Muhammadiyah has two interesting *jawab* from the 1950s–60s. In the first,[449] some attention is paid to the principle that it is better for women to perform prayer at home, but this is quickly countered by the proposition that a prayer place (Mushalla Aisyiyah) for women is the same sort of space as the home. There is uncertainty in this *jawab*, the Majlis Tarjih itself saying that the matter is debatable. In the second,[450] the idea of Mushalla for women is accepted as a valid object of gift but, for 'the common welfare', it is not permitted for men to pray in it.

Persis permits[451] women going out for the purpose of prayer, even to the 'open field' (*tanah lapang*), on the grounds that there are strong *āḥādīth* from the time of the Prophet that support the practice. On the point that it is better for women to pray at home, this again is rebutted by reference to *āḥādīth*. Where women attend wearing perfume or unsuitable clothing, this is forbidden, but it does not affect the general rule that it is *sunna* for women to attend, especially at festivals. If the conduct of some women is unsuitable, then it must be improved; the faults of a few do not invalidate general practice: '. . . if the shoe is too small we do not cut off part of the foot, instead we make the shoe bigger'. The same rule applies to women's attendance at the mosque. It is interesting that this Persis *jawab* has a reference to a contemporary Muhammadiyah *jawab*, probably an earlier version of the two discussed immediately above.

If we change focus to women going out by reason of necessity, in this case employment, we can see a quite severe divergence of opinion, which is again time-related. There is a famous NU *fatwā*[452] from 1939 which decided that, in general, women might ride or learn to ride a bicycle. It is not forbidden unless it leads to forbidden acts or is an indication that the woman is ugly or a prostitute. By 1939 the bicycle was an accepted form of transport and the *fatwā* recognises this, but the reference to prostitution is rather harder to understand. Perhaps no more than the dangers inherent in freedom of movement was meant. On the other hand, as Dr Abdelwahab Bouhdiba[453] has pointed out in the context of the Middle East, the element of an unlicensed sexuality may also be implied. The example given by Dr Bouhdiba includes riding a bicycle—in her analysis '. . . a new perception of the body'. It is impossible to say; the NU *fatwā* is short and no authority is cited. Perhaps there is a sexual reference, which in this case translates into unease with the standards of female propriety in public, and that might be the answer. For example, there is an earlier NU *fatwā*[454] which equivocates on whether women may trade in the small local markets with face and hands uncovered. It is both permitted and not permitted. The authorities cited are both Shāfiʿī and Ḥanafī. Obviously, again, the Congress is torn between the realities of the then contemporary life and its own views as to control of the public appearance of women.

These two *fatāwā* may now appear very old-fashioned to us in 2003, but, as the Muhammadiyah examples show, this is not so. For example, in one of the few instances where a question comes from a woman, the issue was whether a wife could open a hairdressing business. Her husband was opposed, ostensibly on the grounds that it was an excessive beautification of the woman and hence a possible slander or social threat. The Muhammadiyah *jawab*[455] makes several points: the wife had to consider very carefully the advice of her husband for the sake of peace and unity in the household; on the other hand, the business might be essential to the total household finances; on the plus side, improving the appearance of women may be done if the improvement is for the benefit of husbands. In any case

the business must take only women customers. There are no authorities cited. If one wished to be especially critical, then it could be said that the answer is family counselling and not a *fatwā* at all. Admittedly this is a 1980s view, so let us go back to the 1930s.

We begin with Persis, specifically a *fatwā*[456] by Ahmad Hassan which speaks for itself and shows all the intemperate language for which he is still remembered. But is he wrong from the internal point of view? To answer that, we have first to see what he says:

> QUESTION: What is the law on a woman becoming a guide [pandu]?
> ANSWER: To become a guide or something of the kind, is the work of men and not women. In the time of the Prophet when wars were common, there were no women who became guides or the like—even though at that time the Islamic community was in desperate need of help. They remained women and did women's work, for example in the home. There are many *hadith* which forbid women from trying to be like men and vice versa.
>
> Are there no longer men left to take care of things such that women have to enter men's areas with children trailing behind? Is this demonstrating respect for women? Can't we see the social damage which occurred in Europe, which we imitate, after women went outside the boundaries of their sphere?
>
> We should remember that the progress and wealth that has been achieved by Europeans is not because their women have gone beyond the boundaries of their sex. In fact it has been predicted that one of the causes for the future decline of Europe, will be the freedom of women which has caused social damage, both visible and internal.
>
> In short: Europe has given freedom to women beyond their boundaries but it is not women who have achieved progress for Europe.
>
> The history of the whole world illustrates that no community has ever fallen except when women have been allowed beyond their boundaries. How will it be then if our women exceed their boundaries when we are in a fallen state?
>
> There is nothing written in history which suggests that the freedom for women of the kind we are seeing now has ever helped a free community develop, let alone helped achieve freedom for a community which is divided.
>
> It seems we are happy to imitate westerners in every endeavour which will bring us misfortune in this world and the hereafter. We should imitate them in those matters which will bring us happiness in this world and earn us glory in the next.

This is no longer the issue of women going out to work, it raises the fundamentals of authority, obedience and roles. From the technical point of view the preceding references to Qur'ān and the *āḥādīth* are relevant and to the point. Ahmad Hassan's internal perspective is sustainable, but is the attitude? It is the latter which a modern reader might find objectionable or, at best, debatable. But this is (a) to adopt an ahistorical position and (b) to ignore the scholarship behind this passage. We follow the argument immediately.

Women in authority

The argument is really about authority, and we turn to a contemporary Persis *jawab*[457] which answers the question of whether or not women may form organisations of their own. One would think not, but on the contrary women should, or even must, form organisations. The authority is S III:112 and II:159, 160. At first sight these three verses have nothing to do with the question, and the *jawab* acknowledges this by providing its own interpretation. Bearing in mind the quoted passage immediately above, the second *jawab* proceeds by concentrating on one word common to all three *ayat*—'*allaihim*'—here repentance as well as the affirmation of the truth (of Islam). The form is, however, in the masculine and not the feminine. S III:112 is a condemnation of the Jews but S II:159, 160 affirm forgiveness for those who truly repent and affirm. The point is that these *ayat* apply equally to all believers, male and female. There is no distinction in the Qur'ān and thus, in the absence of a direct prohibition, women are perfectly entitled to form organisations. The *jawab* goes even further, saying 'there is great benefit from women . . . addressing issues which are not given priority by men's groups'. This *jawab* is not in fact convincing; the reasoning is strained and the (unknown) author is inconsistent. The purely grammatical analysis is contradictory within itself, and whether it really represents a sustainable view is debatable. In the light of the earlier citation, it must be doubtful for members of Persis. The NU and the Muhammadiyah also have difficulties.

Both agree that a woman may teach and speak in public, provided propriety of dress[458] is observed and the tone of voice is moderate.[459] This is an interesting condition: raising the voice to be understood is permitted, but an excessive use of the voice is forbidden where it might lead to temptation. On the wider issue of education for women, the Muhammadiyah has an interesting discussion on the reasons for the lack of women experts in *tafsīr*.[460] There are two points. First, the discussion is in the context of science and knowledge, and the preceding *jawab* is concerned with the importance of attaining knowledge. Second, and following from this, knowledge is open to all, including women (the example of Aisyiyah is given), citing S XVI:97. The fact that there are few women experts on *tafsīr* is not the fault of religion. Unfortunately the *jawab* goes no further, but the wider issue of women as leaders is discussed at length in a later Muhammadiyah *jawab*.[461]

The Muhammadiyah Majlis Tarjih discusses the issue with reference to the three basic sources always quoted to deny women an authority to rule. The first is S IV:34:

> Men are the protectors
> And maintainers of power
> Because God has given
> The one more (strength)

Than the other, and because
They support them
From their means . . .

This *ayat* would appear to be decisive, but the Majlis Tarjih explains it as being confined to the relations between men and women *in the household*. The *ʿilla*, therefore, is limited to family finances, which means the duty of the husband to support his wife, children and the appropriate relatives. The *ayat* has no general significance outside this reference.

Second, a *ḥadīth* from Abu Bakr through Bukhārī, Nasā'ī and others:

Society will not survive (prosper) if it submits its affairs to women.

The Majlis Tarjih accepts this as a valid *ḥadīth* but again refers to *ʿilla* in the historical sense. The argument is that at the time of the *ḥadīth* women were not educated and were thus incapable of holding authority. The position now is quite the reverse, where women are fully capable of responsibility through education. They are qualified for authority. This position is reinforced by S XVI:97: '. . . We will bestow [on man and woman] their reward according to the best of their actions'. However, this citation is to argue in a circle. The view of *ʿilla* taken by the Majlis Tarjih is that a new condition—education, thus capacity—has changed the context within which the *ḥadīth* was originally formulated. The 'modern' woman is not the 7th-century woman; qualitatively she is different in her capacity to act. The only common factor is gender, in all else a commonality between the two is not in evidence. But of course in other matters, for example prayer, it is as we saw earlier (see chapter 2). But this is a question of '*ibādāt*, 'must', where *mubāḥ* is not in issue. The fact remains, however, that the suggested *ʿilla* is strained.

Third, a *ḥadīth* from Ahmad: '. . . it is time for ruin if men obey women . . .'. This is rejected by the Majlis Tarjih because one of the transmitters is weak.

The NU gives us two *fatāwā* which avoid this sort of reasoning. The first[462] addresses the issue of whether women can be members of the legislature. Such is permitted on the ground that the legislature is not a court that gives judgements but is a discussion body for making law. In the context of 1950s Indonesian constitutional practice this is a defensible position. Real power did not lie in the legislature but rather in the executive. On the other hand it does betray a lack of understanding of the legislative function, in this case its function to determine the jurisdiction of the courts. Nevertheless, women may be legislators provided that they do not cause slander, that they have permission (from the relevant man), and that they do not damage the Syariah. There is one final point in justifying women occupying this position: the NU committee referred to an earlier *fatwā*[463] of 1935, which was concerned with equality of status as a condition of valid marriage. This

was a controversial issue at the time involving ethnicity, colonial politics and Islamic reform movements in the NEI.[464] The 1935 *fatwā* allowed that women might have a higher status than a man, citing Bujayrimī, but that this did not necessarily invalidate a marriage. The NU committee in 1957 used this argument to justify women legislators—that is, that a difference of status was known and acceptable in *fiqh* texts. The source cited in the 1957 *fatwā*, however, are not the earlier sources. Instead they include Sharbīnī's *Mughnī'l-muḥtāj* and Ibn Ḥajar's *Tuḥfat al-muḥtāj*. The extracts cited do not in fact state the specific conditions described above. The argument is confused.

This confusion is compounded by the final NU *fatwā*,[465] which forbids women standing for the position of village head in the same way that they are not permitted to be judges. The *fatwā* does, however, allude to the Ḥanafī view that women may be judges in property matters. The 1937 *fatwā* is not mentioned and the sources cited are the standard passages from the Shāfiʿī *fiqh*. In short, the NU *fatāwā* are inconclusive and remain so to this day.

These general comments on *wanita* indicate a high degree of ambivalence in the definition of the boundaries of *mubāḥ*. The *fatwā* sources are inconsistent among themselves and even within each source. However, there is also a certainty, as we now see.

Wanita—capacity to marry

A woman does not have a full legal capacity to marry of her own volition. Her lack of capacity needs completion by a *walī*: '. . . there shall be no [valid] marriage without a guardian . . .' (*ḥadīth* from Abū Dāwūd). In the last section we had three examples of ambivalent status; here there is no ambivalence: a *walī* is necessary, but there is also uncertainty as to what constitutes a *walī* and how he should act. In the generally accepted view, a *walī nikah* is necessary in Shāfiʿī Islam; he will be either *walī nasab* (the appropriate male relative) or *walī hakim* (appointed now by the religious courts) where the *walī nasab* is incapable or unreasonably refuses to act. The *walī*'s function is to complete the contract of marriage; the woman lacks the capacity to do so.

On the face of it these are clear propositions, accepted in law as well as socially in Indonesia (and Malaysia). However, there is a complex and fascinating Persis *fatwā* from Ahmad Hassan[466] which presents an alternative view. Although now 50 years old, it has a surprising modernity about its arguments and should be of particular interest to contemporary feminist groups. The *fatwā* is based on an analysis of 24 *āḥādīth* (hereafter numbers 1–24), and Ahmad Hassan finds three views.

First, a *walī* is necessary for a valid marriage. This is the standard view (now law, as expressed in the *Kompilasi Hukum Islam*, Arts 19–23). This is

supported first by *ḥadīth* No. 1 which is from Bukhārī, reporting ʿĀʾisha, which says that of the *jāhiliyya* methods of marriage only one is accepted in Islam—that is, through the actions of the *walī* which are essential. Ahmad Hassan accepts this but denies that the *ḥadīth* excludes other methods or is obligatory. It is only one form. He finds deficiencies in three further *āḥādīth* cited. No. 2 (Ahmad and Hakīm) repeats the necessity for a *walī*, but in Ahmad Hassan's view this is weak because no Companion was named from whom it was received. Nos 5 (from al-Dāraḳutnī) and 6 (Ahmad, al-Dāraḳuṭnī, and Tirmidhī) he also finds weak. *Hadīths* Nos 3 (Ahmad and Tirmidhī) and 4 (Ibn Mājā) are dismissed on the same grounds, with the additional argument that 'when it comes to matters like taking away people's freedom, the words of the Prophet's Companions cannot be used as a justification'. This is a point which Ahmad Hassan pursues in his discussion of *ḥadīths* 9, 10 and 11 (Dāraḳuṭnī), all of which, in his view, report the words of the Companions and not the Prophet. The substance of these *āḥādīth* is that women cannot act as *walī* for other women. This he interprets as no bar to a woman marrying herself (i.e. concluding her own contract). He instances several examples (below) of *āḥādīth* which support this and are thus in contradiction to those relied on by the proponents of the view that a *walī* is essential. The explanation for the contradiction is that it does not derive from Islam '. . . it is a matter of cultural norms . . . and because men take care of public matters . . . and marriage is a public matter . . . then it is usually left in men's hands'. It is from this position that competing *āḥādīth* must be judged.

The second view discussed by Ahmad Hassan is that the *walī* is not necessary. This is his preferred position. He begins by selectively citing from S II:230, 232; in the former passage, '. . . after she has married another husband . . .' He interprets this to mean that she has herself contracted this marriage because the verse does not specify the intervention of a *walī*. As for *ayat* 232, '. . . do not prevent them from marrying their former husbands if they mutually agree on equitable terms . . .'. This again, in his interpretation, excludes the *walī*. He elaborates on these implications:

> We should look at this verse further. Those who say that the guardian must organise the marriage, say the guardian is better placed to know which proposals come from good or evil men and are better at choosing a good and respectful man. If that is the case, why are things not organised by the guardian from the beginning? Why are women allowed to choose and make a promise to the man prior to that? Why do the Qur'an and the *hadith* allow a man to choose a widow directly? Is choosing a man or making a promise to marry an easier, less consequential matter than marriage? Can a woman organise everything herself except the marriage ceremony?

From this position he then cites nine *āḥādīth*: No. 14 (from Abū Dāwūd and al-Nasāʾī) says that the former *walī* of a widow has no superior power

over her; No. 15 (Muslim) is to the same effect. No. 16 (Bukhārī) states that widows cannot be married off without consultation, and the permission of virgin women is necessary before marriage. In other words, a valid contract depends on consent, otherwise it is void. From this Ahmad Hassan concludes that the initiative is fundamentally with the woman. He supports this by *ḥadīth* No. 17 (Muslim), which says that a widow may be proposed to directly without the intervention of a *walī*. His interpretation is that consent is more fundamental than the 'marrying off' part of the arrangement; why then the need for a *walī*? He then proceeds to give examples, from five *āḥādīth*, to show that marriages did in fact take place in the time of the Prophet either with or without a *walī* or with an inappropriate *walī*. His No. 19 (Bukhārī and Muslim) relates how a woman offered herself to be married to the Prophet without a *walī* but that he married her to another even though he was not her *walī*. In No. 20 (Ahmad and Nasāʾī) the Prophet himself married a woman without a *walī*; No. 24 shows that ʿĀʾisha acted as a *walī* for a woman in the absence of an appropriate *walī*: 'She would not have been brave enough to do so if the girl's *walī* was needed'.

The third and final view dismissed by Ahmad Hassan is that a *walī* is needed only if the woman is a virgin. This in fact is a special case of the first view—that is, that a *walī* is necessary. He dismisses it in the following words:

> If virgins have the power to look after themselves, why don't people propose to them directly? We would answer: since the distant past, traditional norms have placed great importance on the polite behaviour of virgins. Girls were mostly educated in the home and raised and guarded as a valuable item worth more than a person. Part of this rearing and education meant that virgins were not allowed to be seen uncovered and therefore could not talk to any man except those that they were forbidden to marry. Such virgins, of course, were generally shy and it was not possible to propose to them except through their guardian or supervisor. This does not mean that such girls do not have the power to marry themselves.
>
> Imam Malik once said: women from the lower classes may marry themselves but this is not permitted for women from the respected class. From this we understand that women from the lower classes were unable to protect their orderly, clean nature and as a result were less shy and therefore able to marry themselves. The women from the wealthy and respected classes were truly protected and therefore could not marry themselves off before the men present, they could not even show their face to such a group.
>
> So it becomes clear that the guardian question is one of culture and tradition. Whether such traditions are good or bad, they should not be used as a basis for denying women's rights.

His conclusion, therefore, is the second view, that a *walī* is not necessary in Islam but is essentially a matter of culture. It was and is not the view in Indonesia, to which we now turn.

Both the NU and Muhammadiyah require that a *walī* is necessary for a legitimate marriage; indeed it is only in a Muhammadiyah *jawab*[467] that the question is raised at all. In this case it was in the context of a father refusing to act apparently because he disapproved of the potential husband. The Majlis Tarjih made some general comments, which included that refusal to act was justified if the man was not a Muslim. If, on the other hand, the man was a Muslim and of good character, then permission should not be withheld '. . . to avoid temptation'. If he still refused, then a *walī hakim* should be appointed.[468] The woman cannot marry without a *walī*.

It is in the NU *fatāwā*, however, that we find the most extensive discussion, the greater part of which centres around the capacity of the *walī* to act. A *walī* must of course be a Muslim—thus, an atheist[469] does not qualify—and, despite the *ḥadīth* cited by Ahmad Hassan (above), male (of good character). There are four *fatāwā* to the point, the first three of which are all from 1928. In the first,[470] the question was whether the *walī hakim* could act in the absence of reliable evidence as to the first husband's death. The answer was inconclusive, the sources cited (Ibn Ḥajar's *Tuḥfat* and the *Bughyat al-mustarshidīn*) not being considered as definite. The second *fatwā*[471] permits a *walī hakim* to marry off a girl who is 15 and has two witnesses, despite evidence to the contrary by an uncle and grandmother who were held to have no standing in the matter. That is, they are outside the contract which is in the control of the *walī* who takes precedence. The authority here is *Fatḥ al-mu'īn*. Finally in these three, the *fatwā*[472] distinguishes between two marriage contracts, one concluded by a *walī hakim* and the other by the woman's father while abroad and without the daughter knowing. The first in time is the valid marriage, and this brings us to the vexed issue of *walī mujbir* (*walī* with the power of 'coercion'), who is defined as the father or grandfather of a virgin. Strictly speaking, he may conclude a marriage without the girl's consent and there are NU *fatāwā*, all from 1930, which permit this,[473] even in the case of an adult widow.[474] The key point in each case is that the girl's consent is not required.

We can conclude this survey of *fatāwā* on *walī* by coming back to the issue of consent. The *fatāwā* we have seen regard the consent of women as secondary, at least in strict legal terms. Only Ahmad Hassan argues for its primacy. All this material dates from the late 1920s through to the 30s. Now, in the 1990s, the question has been definitively settled by the Marriage Law of 1974 and the *Kompilasi Hukum Islam* (Art. 16) which, while reaffirming the necessity to have a *walī*, also makes consent essential. Part, though not all, of Ahmad Hassan's position has been achieved by legislative intervention.

OBLIGATION

The general sense of obligation is 'duty', and 'legally' or 'morally' binding. The *fiqh* of course has its own classes (*wājib, farḍ*), with subdivisions into

personal and collective, contingent and absolute, and quantified and unquantified obligation. These subclasses and the relationships between them should be kept in mind in assessing the *fatāwā* that follow because, while they are not of themselves classifiers in the *fatāwā*, they are a subtext especially as to the choice of authority in each particular *fatwā*. This is especially apparent in the oscillation *wājib–mandūb*—that is, between the commanded and that which is recommended (persuasive) legally.

Perkawinan—marriage

Marriage is a contract in all systems of law, but it is a special sort of contract because its conditions are set before it is entered into. There is no room for an individual condition to be made, except where the law already allows for it. The *fiqh* is no exception to this generalisation. However, in Muslim lands the *fiqh* is not the only law—one always has to contend with *adat* (custom)—especially in matters of female obligation and rights to property (see below).

The first question is, obviously: what is 'marriage'? Certainly it is a contract, and all our sources are quite clear on the matter. The formalities must be completed properly, although the NU refused,[475] in the 1930s, to declare a marriage invalid for small errors in a contract provided these were repaired and the intention was clear. On the general question we do have some interesting observations from Muhammadiyah and Persis, the former from the 1970s and the latter from the late 1930s. They make for an interesting comparison.

The Muhammadiyah *jawab*[476] describes three forms of marriage, which are monogamy, polygamy and polyandry. The latter is forbidden (citing S IV:23–24); it would be *zinā'* (*zinah*) in any case for a woman. Marriage generally, including more than one wife, is prescribed in S IV:3, and the Majlis Tarjih then proceeds to discuss the ethics of polygamous marriage. The preferred form is monogamy, because in this form mutual duties are best and most easily performed. Polygamy, however, is permitted provided that the wives can be treated with equal justice (*'ādil*), which includes the appropriate living costs, housing, support for children and equal affection (S IV:129, LXVI:6). 'Support' also includes equal support for the respective parents (S XXXI:14). Given the practical difficulties involved, a man must consider seriously whether he is able to fulfil these criteria.

Compare the Persis view, which is part of the extensive *jawab*[477] on head covering and social interaction of women. The portion that interests us is the general duty of women, including here the duty to prevent illicit sex. Polygamy is one answer, and the reasoning is as follows:

> [Women] should arrange things so that men take more than one wife according to their energy as happens in Sumatera and other places. Then they should live in one house with their co-wife as family. This way, although not everybody will be kept from illicit sex, it would certainly decrease because men,

> regardless of how bad they might be, if they have two wives that is sure to decrease their naughtiness.
>
> This polygamy will make women feel hurt. Women must think and choose what is more important—their happiness or saving a woman and her husband from a polygamous relationship which is not halal. If their personal happiness is more important than the rescue and honour of two souls then we need go no further.
>
> However, if women are not prepared to sacrifice their own happiness a little how can we trust that they will sacrifice more than that? How can we trust that when they deliver a sermon before a group of males that they will generally look for the good of the whole community both male and female?
>
> Women should actually remember—don't be tricked by men who advance women into the field of men. Actually not one of your ideas will be used by men. From all that I have observed and heard—men evaluate whatever a woman says, good or bad, according to her appearance or style.

These arguments, from a supposed social rationality or necessity, are still to be heard today. But the contrast with the later Muhammadiyah is striking. Both movements are described as 'modernist', but the contrast between the two here shows quite distinct forms of reasoning. Ahmad Hassan in the passage just cited uses no text support, which is unusual for him. The Muhammadiyah opinion, on the other hand, is limited to the usual Qur'ān verses and vague admonitions about justice. In terms of reasonable argument it is unimpressive. Whether one agrees with Ahmad Hassan or not, there is a socially principled stand being demonstrated.

Returning to the Muhammadiyah, the issue of *muʿta* (temporary marriage or 'marriage for pleasure') is discussed in a modern *jawab*.[478] While this marriage has never been part of Indonesian practice, the *jawab* is interesting because it demonstrates typically Muhammadiyah reasoning. The essential element of *muʿta* is that marriage, via a *walī*, is contracted for a fixed period. There are two questions: first, is such a marriage valid? and second, how must the time limitation be expressed—in or out of the written document of contract? These are fundamental questions, and they are complicated by the fact that the *āḥādīth* are contradictory. While there is a reference to this form of marriage in the Qur'ān (S IV:24), a reference omitted in the Muhammadiyah *jawab*, the later traditions considerably gloss it. On the one hand it was permitted, at least for short periods (Bukhārī), which was later defined as for need, such as in times of absence from home as in war or travel (*āḥādīth* in Muslim and Tirmiḍhī). On the other hand, the *form* was considered valid but the limitation in time was invalid. This is the second question, the form of *contract* that the Muhammadiyah does not consider. It is the essential issue, because marriage is a contract that stands or falls on the validity of contract rules. Thus Shāfiʿī, for example, was prepared to allow *muʿta* validity provided that the limited time was not expressly stipulated in the document of contract. Whether this is *makrūh* and not *mubāḥ* is debatable, though probably the former. The

point about the Muhammadiyah *jawab*, however, is that the issue is not even raised, although it is fundamental.

An interesting variation on contract is to be found in an NU *fatwā*[479] from 1935, which is an opinion on a practice known as *Cina buta* ('blind Chinese'). A husband has irrevocably divorced his wife but wishes to remarry her. The *fiqh* requires an intervening marriage. The Indonesian (and Malaysian) practice was to employ a man (*muḥallil*) to enter into the intervening marriage on the understanding that consummation would not occur. In other words, the form but not the substance of the marriage could be demonstrated, after which, on divorce, the remarriage could take place. How widespread this practice was (and is?) is unknown, though it is not an uncommon theme in literature of the period.[480] The *fatwā* draws a distinction between form and substance. The contract is valid, though *makrūh* (repugnant). However, if the arrangement is part of the original marriage contract, then that marriage is not valid, it is *muʿta*.

There are other examples of bars to marital obligations being incurred. All our sources know the concept of exclusion—'may not'. An example is the class '*saudara susu*' (children nursed by the same woman), who may not marry. The prohibition is in Qur'ān S IV:23 and repeated in *āḥādīth* from Bukhārī, Muslim and others. The Indonesian *fatāwā* follow exactly the same rules,[481] although there is some dispute as to how many times and with what frequency the suckled (foster) child must take milk.[482]

A woman 'may not' be forced into accepting the obligations of marriage. We have already seen the primacy of this concept in the Persis view, and this can be contrasted with an NU *fatwā*[483] from the same time (the 1930s). In this case the local police attempted to force a woman to marry because she had been involved in sex outside marriage. The NU committee decided that this was not permitted but, on the other hand, a judge (not specified as civil or religious) might actually make an order. The authority cited is Ibn Qāsim's *Fatḥ al-qarīb* from the Arabic, not from the Indonesian translation.

This example of lack of positive or voluntary consent can be contrasted with the impossibility of consent because of factors outside the control of the woman herself. She may wish to but 'cannot' enter into the obligations of marriage. There are two *fatāwā* from NU separated by over 30 years. They are remarkably consistent, both concerning menstruation (*ḥaiḍ*) which, as is well known, must run three courses before remarriage is possible. The first[484] concerns a woman who, for medical reasons, had not menstruated for 18 months and was not likely to do so in the future. The committee decided that remarriage was not possible until either courses did occur or the time for menopause had arrived. The time at which this is placed was not specified. The same question came up in 1960, and this *fatwā*[485] repeated the 1935 answer, that menstruation or menopause must occur. The same authority (*Iʿānat aṭ-ṭālibīn*) is cited in both instances. However, the 1960 *fatwā* provides an alternative: if the absence of menstruation can be shown to be due to a proven medical condition, then a nine-month waiting

period is sufficient for remarriage. The authorities cited are the Ḥanbalī and Mālikī *madhhab*, but no authors are mentioned. The *Iʿānat aṭ-ṭālibīn* is again cited, as in the 1935 *fatwā*, and merely repeats the Shāfiʿī position on remarriage. A later *fatwā*[486] from 1989 reinforces this position: here it was medically proved that no fetus was in the womb, but the nine months still had to be observed for reasons of 'piety and grieving'. No fewer than eight of the standard texts are cited, but the references are again general as to times. It is hard to escape the conclusion that in 1935, 1960 and 1989 the implications of medical science had not been fully assimilated. As against this comment, there is one *fatwā* from the same year (see chapter 4) that shows a perfect awareness of science. Given this fact, it is hard to deny that it is gender which is primary in the examples just described. If a committee can sensibly discuss organ transplants, IUD and vasectomy, it cannot logically deny that a fetus does not exist if this is medically demonstrated.

But what is logic: is logic chopping an option in *fiqh*? Of course it is, as in this Persis example[487] from the 1940s. May a woman and her father's brother's sister's child be wives to the same man at the same time? The question may appear unrealistic or 'academic' in the sense that the varieties of kinship systems in Indonesia, subsumed under the general rubric of '*adat*', certainly deny the possibility. Why then raise it? The answer is that such a marriage stretches the limits of *mubāḥ*. It does not fall within the forbidden marriages as set out in the Qur'ān (S IV:22–24) but there are *āḥādīth* (from Bukhārī and others) which forbid generational variation—that is, degrees of ascent and descent in the same marriage. This also is a feature of all Indonesian *adats*, that the idea is more or less unthinkable. Our present *fatwā* is in the form of a debate between 'AQ' and 'BN'. Both accept the *ḥadīth* but place different interpretations on it in relation to the Qur'ānic passage. AQ argues that the latter sets out prohibitions which are absolute and that the effect of the *ḥadīth* is to class the aunt/niece pairing as allowable but *makrūh.* BN, on the other hand, argues that the function of *āḥadīth* is to extrapolate and explain the Qur'ān (the tree and branches analogy); therefore, in this case the aunt/niece pairing would destroy family ties. This pairing is thus consistent with, though not mentioned among, other forbidden pairings in S IV:22–24.

To this AQ responds that, on the basis of such analogous (*qiyās*) reasoning, two cousins should not be allowed to become co-wives either. It is not clear from the text whether he is referring to parallel or cross-cousin marriage, either one of which can be a preferred form in one of the varieties of Indonesian societies (e.g. Batak and Minangkabau). His view is that *āḥādīth* are not of the same degree as the Qur'ān but secondary. BN replies to this by saying that AQ is insulting the Prophet by criticising the latter's use of analogy in the aunt/niece controversy. How then can AQ support the use of analogy to extend the argument to cousins? The extension is 'childish'. To this, AQ responds that it was BN who introduced *qiyās* in the

first place. From this point the argument degenerates into an exchange of insults ('childish', 'stupid', 'ill-educated') but revives somewhat in a discussion of *makrūh* and *ḥarām*. BN's view is that if the aunt/niece marriage pairing is *makrūh* then it should just be declared *ḥarām*; in this way if AQ is right, nothing is lost; if wrong, unlawful sex cannot occur. To this AQ replies that his use of *makrūh* is sound, and not based on what would be socially convenient. The fact that most '*ulāmā*' do not agree with him is beside the point.

We have come to 'may', but 'may' approaching 'may not' in the context of Islamic jurisprudence *and* Indonesian social structures. Both AQ and BN are in fact looking towards *ḥarām*, BN's view is from the Islamic and social perspective, the two together make it the safe and obvious option. AQ takes his stand in Islam alone, regardless of implications for social life. Both are 'modernist' in that they begin from premises internal to Islam, but the resemblance is quickly over. One may even say that 'purist' and 'social' can be contrasted. More to the point, it is context that distinguishes the two results: for AQ the view is from within, while for BN it is also from outside the mediation of *āḥādīth*. The society within which one lives is also a mediator—classically, as we say now, 'modernism'.

It will have not escaped the reader that 'woman' is now getting rather remote; she is only an object, and in terms of obligation, which requires status and will, has no initiative. If this comment seems a little extreme, three NU *fatāwā* seem to support it. The first,[488] from 1928, is on the complexities that can arise from *ʿiddah*, reconciliation and remarriage. The circumstance here (hypothetical?) was that a man claimed reconciliation with his wife before the expiration of *ʿiddah* but did not tell her, so that when the period ended she remarried. If the husband can show evidence—how is not explained—then the second marriage is invalid. If he cannot show evidence, then four possibilities result. First, if the wife denies reconciliation, her remarriage is valid. Second, if she accepts that reconciliation occurred, her remarriage is still valid, but if the second husband dies or divorces her she automatically returns to be the wife of the first husband without marrying again. Third, if the second husband denies reconciliation, his marriage is valid. Finally, if the second husband acknowledges the reconciliation or will not deny it under oath, the second marriage is invalid. In this case the wife does not return to the first husband unless she accepts that reconciliation occurred or the first husband takes an oath for her to this effect. In this case the second husband must pay the appropriate *mas kawin*, or half if his marriage has not been consummated, on behalf of the wife. The whole discussion is centred on a rather formulaic application of the *ʿiddah* rules, and the point that should be emphasised here is that the wife is basically passive so far as obligation is concerned. She does not even take an oath, it is taken for her.

Our second *fatwā*,[489] from the late 1930s, is again on the husband's offer of reconciliation before the expiry of *ʿiddah*. The wife refuses and receives

no maintenance or support from him and marries again after seven years. The second marriage is legitimate unless the husband can produce evidence that reconciliation actually took place. The *fiqh* texts cited (Ibn Ḥajar's *Tuḥfat* in 'Abd al-Hamīd Shirwānī's commentary) are the same in both cases. The striking feature, as in the first example, is female passivity combined with a formulaic application of the *'iddah* rules.

An even more striking example, this time from 1940, is a *fatwā*[490] on intention to marry. Here a man had wished to marry a younger daughter but at the ceremony an older daughter was named and accepted by the man who, however, intended still to marry the younger. The marriage was invalid for confusion of intention. The point is that neither of the women exercised any active role. A passivity characterises their presence insofar as they have one.

In contrast, another example is the extreme case of elopement (*kawin lari*), which is certainly an exercise of female initiative at its most decisive. A *jawab*[491] from Muhammadiyah in the early 1990s is instructive, indeed more than that because the whole reasoning is based on parts of the Compilation of Islamic Law (above). In this *jawab* the *fiqh* is now mediated through the state-approved version of Syariah. The references are not to the Qur'ān or *āḥādīth* but to articles in the Compilation. These are Arts 2–4 and 14, including a reference also to the Marriage Law of 1974; the details need not concern us here. The point is that the issue is decided by the secularised Islamic Law. Elopement is not a recognised option in terms of the Compilation, which purports to be Syariah in its acceptable modern form. The *jawab* takes over entirely the Compilation version, which actually requires a *walī nikah* (and we have seen the problems above) and two witnesses—in short, a registrable agreement. It is difficult to know what else the Majlis Tarjih could have answered, but there is no reference at all to contemporary social issues and the stresses these place on individuals.

But what of the nature of a woman as to her fitness to accept the obligations of marriage? If she is deemed morally 'bad', what then? We have two answers, one from the 1940s and one from the 1990s, both cases very similar. The first, from Persis:[492] may one marry a woman (*wanita jahat*) who has had unlawful sex? This is a loaded question, and from the answer it appears that the load is on the woman. The *fatwā* begins by stating that one may marry freely (provided it is to a Muslim) without reference to race or class. This is actually debatable in the Muslim world generally and in the Indonesia of the 1930s–40s.[493] Leaving this aside, the primary reference is to S XXIV:3: 'Let no man guilty of adultery or fornication marry any but a woman similarly guilty . . . nor let any but such a man . . . marry such a woman . . .'. The interpretation that Persis places on this verse is that those of bad character usually marry each other. To this Persis adds the often-cited *āḥādīth* (from Tirmiḍhī, Nasā'ī and Abū Dāwūd), which relates how the Prophet replied when asked (by one Marstad) whether marriage to an adulteress was permitted. The Prophet replied that a man should not do so. The conclusion, therefore, is that

the case was *makrūh,* not *ḥarām*; in Persis phraseology, '. . . the Prophet did not wish to see good people marry adulterers'.

The second opinion, a Muhammadiyah *jawab*[494] from the 1980s, is very similar. The same citations are made with the same result, plus an admonition to avoid sin. Sinfulness may be the result of or encouraged by such unions.

A final example, which takes us into obligation and divorce, is a Persis *fatwā*,[495] which answers the question of whether an agreement to marry a second wife on condition that intercourse with the first wife is forbidden was a valid marriage. The first wife had agreed to the conditions set by the second wife prior to the marriage. The answer was in contract: a condition precedent can never be part of a contract, so that a purported divorce before marriage cannot be valid. The analogy is that one cannot free a slave before actually owning it (citing *aḥadīth* from Ibn Mādjā). If, on the other hand, after marriage the husband promises a divorce if intercourse with the first wife takes place, then this is a valid repudiation of the second wife. The condition is a condition subsequent to the contract of marriage. That is, the second wife has a status, and the obligations that flow from that are known and certain and thus valid.

These examples illustrate how the sometimes formulaic application of marriage rules do not deal adequately with moral positions. The 'bad woman' is a moral contaminant; this is hardly morally generous, given that 'bad man' is ignored. Again, the manipulation of contract in marriage, illustrated with reference to the legal consequences of intercourse in a polygamous union, can never constitute a moral position from the woman's point of view. Both examples are in *makrūh*, the reprehensible but permitted, and perhaps these *fatāwā* can be read as unsuccessful attempts at some reconciliation for the new circumstances of the 20th and 21st centuries. This brings us to divorce, where exactly the same issue arises.

Perceraian—divorce

The great majority of issues are easily dealt with in that all our *fatāwā* merely recite the standard rules. However, as in all Muslim countries, two issues stand out—the grounds for divorce, and the male initiative to repudiate (*ṭalāḳ, ṭalāq*) the woman. All states with Muslim populations have attempted to control this with varying degrees of success. The Indonesian *fatāwā* also are less than consistent or successful in translating Revelation into practical everyday explanations of individual duty. On the other hand, they illustrate both tension and conflict in the necessary accommodations and practicalities bounded by Qur'ān and *ḥadīth.*

Ṭalāq is the key around which the shedding of obligation revolves, particularly the irrevocability of triple *ṭalāq* (pronounced at the same time). Whether this is an absolute revocation has always been debated in *fiqh*. We have a Persis *fatwā*[496] by Mohamed Ma'sum which takes the issue in detail.

His view is that a triple recitation at the same time is not an irrevocable divorce. The evidence for this is in Qur'ān (S II:229), 'A divorce is only permissible twice, after that the two should either hold together … or separate [i.e. the third *ṭalāq*]', and in a number of *aḥādīth*. The interpretation placed on the Qur'ānic passage is that a (reconciliation-possible) period must be allowed and that only then can a final *ṭalāq* be decisive. As Mohamed Maʾsum then concludes, '. . . this makes sense according to logic, a man can only divorce his wife . . . so if he has not reconciled after the first *ṭalāq* how can he divorce her again?'. In support of this reasoning he goes on to cite al-Nasāʾī, who relates the anger of the Prophet at the practice. In Mohamed Masʾum's reading of the *ḥadīth*, he says:

> The Prophet stood in anger and said—'does he want to play around with Allah's book even whilst I am still living amongst you?'—the Prophet's anger is clear evidence that this type of talaq is outside the boundaries of Islam.

This is followed by citations from Ahmad and others, including an admittedly weak *ḥadīth* which he nevertheless justifies '. . . because it is supported by the others'. This is not just pleading to support a preferred view. The *aḥādīth* to the contrary he finds weak or inadmissible, citing al-Bukhārī on the weight to be given to them. He concludes:

> So it is clear that pronouncing the talaq three times at once has the same effect as saying it once. This was the case in the time of the Prophet and under the rule of Abu Bakr. During his rule Umar witnessed many people who just played around with talaq and devalued it. He took a harsh approach towards such people making three talaq mean three talaq as a reminder to others. The ignorant then improperly followed Umar's reasoning and forgot the Prophet's Fatwa.

The same result was arrived at 40 years later in a MUI *fatwā*[497] given in 1981, but on the basis of quite different reasoning. The *fatwā* was given in response to a request from the Ministry of Religion. The answer is in two parts. First, acknowledging the fact that, as we have seen, the *aḥādīth* are not consistent, it is preferable to take the restrictive interpretation—that is, only one *ṭalāq* has been given. However, the MUI did not cite the same authorities as in the earlier Persis *fatwā*, nor did it refer to that *fatwā*. Instead it briefly mentioned the positions of a number of Ẓāhirī *fuqahāʾ*, Ibn Taymīyya and sources from the Imāmī (Shīʿī) *madhhab*. The references are vague and short. The striking feature is the eclecticism of source; Ibn Taymīyya is not surprising, but an Ẓāhirī reference is, while the Shīʿī reference certainly is a radical departure from previous practice in Indonesia. Whether or not one can properly describe this complex as amounting to *talfīq* is not clear, because the discussion is brief. It is probably safer to class these sources as examples of practice rather than a properly worked out combination of principles as such. But the question remains, why were these sources cited at all?

As the Persis *fatwā* had demonstrated, there are perfectly respectable Sunni arguments available in both *aḥādīth* and in *fiqh* texts. One possible answer is that these classical references are by way of preliminary, to add an Islamic colour to the real reasoning of the *fatwā*. This is the second part; most of the discussion is actually on the Marriage Law of 1974 (see above), which incorporates *ṭalāq* in the judicial process. *Ṭalāq*, in whatever form, is no longer valid on its own. This is the real reason for the *fatwā* and it illustrates clearly the primacy of state law over the *fiqh* in this matter. The later *Kompilasi Hukum Islam* (1991) is to the same effect.[498]

Our final example is an NU *fatwā*[499] from 1989, the same year as the then new Law on Religious Justice (No. 7/1989). The purpose of the Law is to place the *fiqh*, including *ṭalāq*, in the control of the reformed religious courts.[500] The *fatwā* begins by citing six standard *fiqh* texts on the *talāq* rules (including *Iʿānaṭ at-ṭālibīn* and *Bughyat al-mustarshidīn*) and then attempts to integrate the rules into the new law. It makes four points: (a) declaration which takes place in court is the first divorce, and the period before remarriage runs from this time; (b) if a declaration has occurred outside the court, and this is followed by a declaration before the court, the latter counts as the second; (c) if the declaration in the court is before the expiry period within which remarriage is not permitted, then divorce has not taken place; (d) if the declaration is just to register a divorce which has already taken place, then it is not counted. This is a clear demonstration that, from the NU point of view, the *fiqh* texts remain primary and that the Religious Court is merely a mechanism for the implementation of Syariah. This is certainly not the state ideology. It is unlikely that Syariah will remain untouched over time by the judicial process, though this of course is a matter for *yurisprudensi* to show or not in the future.

If we compare these last three *fatāwā* we can see three different arguments—from within Syariah, from the primacy of the state law with reference to Syariah, and from the primacy of *fiqh* with reference to state law. To a large extent each argument is a response to the circumstances of its own time. This is important, especially with respect to the Persis *fatāwā*, where the secular laws can never be a given; in fact they are not a necessary component in *fatāwā*, and it is this which sets them apart from the other three main sources. The *ṭalāq fatāwā* are an excellent example of the respective alternatives in reasoning, and we continue this demonstration with reference to *keluarga*—the family.

Keluarga—family and property

The *fatāwā* define family in terms of property. So far as female obligation is concerned, the evidence shows that the boundaries of *fiqh* can never in practice be absolute. All our sources recognise this, each in its own way. The following Persis *fatwā*,[501] given in full, encapsulates *fiqh*, the practicalities of life, and the position of 'wife'.

> QUESTION: a husband and wife who don't own anything work together—they don't have any capital or promises/contracts between them. Over a period of thirty years hard work they accumulate wealth in the form of a house, garden and a trading operation. Suddenly the wife dies leaving behind children. Do the children have any right to demand the mother's share from the father under Syariah?
> ANSWER: In the books of fiqh, this problem is what is known as Syirkatul Abdan which means a union of bodies, that is people who strive, work or the like with the promise/contract that they will split the profits between them. Of course between a husband and wife there is no such promise or contract.
>
> However, if we were to answer on that basis that the woman was not entitled to a share, the man would also not be able to claim a share because men and women have the same standing and rights in matters of trading and work. So if we take that path, then it means that none owns the property.
>
> Therefore it must be that the husband and wife own equal shares of the property. Apart from that we all know that a husband must pay maintenance to his wife. So we must ask whether the husband has paid sufficient maintenance to his wife over the thirty years. If the husband didn't pay maintenance such that the wife bought food out of their combined income it is clear that the wife and her heirs have a right to demand nafkah [maintenance] from the husband.

This *fatwā* is short and, unusually for Persis, the author (Ahmad Hassan) cites no *ḥadīth* despite his references to Syariah. It is these references which are interesting from the woman's point of view. They are (a) to contract ('*syirkatul abdan*') and (b) to marriage ('*nafkah*', maintenance or support of the wife). This is a mixing of two subjects in *fiqh*. What we have here is an attempt to explain or determine custom (*adat*) in Syariah terms. The Syariah does not know or provide for property jointly acquired during marriage. But this form of property is crucial in all the Indonesian *adats*.[502] The nearest equivalent in syariah is partnership assets (*syarikat*), but the rules for the distribution of these assets make no sense in the Indonesian context. The form of property assumed in *syarikat* is movable (i.e. money, transportable assets), not immovable (i.e. land). For Ahmad Hassan, in the late 1930s, the recourse to the *fiqh* on contracts and partnerships was an obvious reference. However, he provides no analysis of the rules. This is a striking omission; in all the sources the absence of really technically difficult *fiqh* (outside family law) discussion is notable. This can mean (a) lack of competence, which I do not believe, or (b) that Syariah in Indonesian *fatāwā* is basically about family law. We return to this suggestion later, but for now we pursue the property issue as it affects women.

Chronology is important, because the *fatāwā* are responses to conditions of the time. The Indonesia of 1930 is not the Indonesia of 2000, but by taking the material in date order we can see a certain consistency. The *fatāwā* are all from the NU, which allows us a close reading. The first,[503] from 1926, is on the division of property jointly acquired by husband and wife (Javanese, *gono-gini*, Malay, *harta (sa)pencharian*). The '*ulāmā*' found the property to be jointly owned and that equal division should be

made on divorce. A distribution based on respective contributions was expressly forbidden. The source cited is Sharqāwī's *Ḥāshiya 'alā al-taḥrīr*; in other words, the *adat* form of property is subsumed into the Syariah rules on partnership. However, in the same year, a later ruling[504] appears to contradict this. A wife has no rights to a share in income or capital unless she has supported the husband's earnings. The same rule applies to husbands who did not contribute financially. No sources are cited. The absence of sources is again significant in a third ruling,[505] this time from 1939. If the wife works with the permission of the husband it is permissible for the husband to also pay her an extra income. The justification for this is that the payment is analogous to *mas kahwin*. No explanation is given and no sources are cited to explain this analogy, which is indeed rather far-fetched. It is an attempt, not very successful, to try and accommodate a customary practice within the framework of Syariah. Our final example returns us to the first of the NU *fatāwā*. This is a decision[506] reached in 1960 which permits an equal division of inheritance with the permission of the heirs. No sources are cited, although the decision is clearly in breach of the *fiqh* rules (*farā'id*). Discussion is minimal, almost non-existent.

We can compare these results with two recent *jawab* from the Muhammadiyah. The first[507] concerns the inheritance of jointly acquired property among the offspring of several wives. The discussion is short and no authority is cited. The answer is basically to define respective shares in Syariah classes: that is, male heirs take two shares to the female one. More important, the class 'acquired property' is not recognised as a separate class but is assets of the estate, thus subject to Syariah. The same view prevails in the second *jawab*[508] on the transmission of heirloom property (*harta pusaka*), but this time supported by the authority of S IV:176, which sets out the *farā'id* shares. The Muhammadiyah answer to *adat* then is to ignore it as an alternative system and to demand the implementation of Syariah.

The NU and the Muhammadiyah clearly differ in their responses to *adat*. In neither group of *fatāwā* is the reasoning satisfactory, particularly where the *adat* classes of property specify rights and obligations involving women. The '*ulāmā*' are in an impossible position from a strictly legalistic viewpoint, but this should not be allowed to obscure the very real efforts made for compromise in informal settlements.[509] These are outside the scope of this study but should not be dismissed as ephemera. They are not, because they demonstrate that the practices of Indonesian Muslims are not necessarily always based on or determined by Syariah. The *fatwā*-issuing bodies are well aware of this fact, and it is asking too much to require consistent technical reasoning. In short, the *fatāwā* can only be approximations of *fiqh*. There are certain problems that have no solutions, and the *fatāwā* can only be explained and understood if one accepts this.

An excellent example, this time from MUI in the 1980s, illustrates this point. It is on adoption, an issue that brings together the family, property, the child and mother—in short, the whole range of obligation with the

woman at the core. The MUI *fatwā*[510] begins by restating the classical position that an adoption does not break the tie between the child and natural parent, nor does it create a new one with the adopting parents, particularly with respect to inheritance. The authority is in Qur'ān (S XXXIII:4, 5 and 40). In addition, four *aḥādīth* from Bukhārī and Muslim are cited. There is no dispute as to the propriety and authority of these sources. However, not content with this, the MUI went on to cite Art. 34 of the Undang-Undang Dasar of 1945—the Constitution of Indonesia. This merely states that the poor or deprived children are the responsibility of government. As a matter of practice this article means nothing. It is not logically necessary for the *fatwā* and, if one is realistic, it shows that the MUI either does not know of or chooses to ignore the scandal of street children in urban areas of Indonesia. This is by the way, but the Constitutional reference is otiose on the face of it. However, as in so many MUI *fatāwā*, the state reference is crucial—not because of what it says, but because the reference is made at all. In this case it leads back to an earlier discussion in 1979 when the issue of adoption was discussed in the Jakarta Regional MUI,[511] where the focus was on the adoption of Muslim children by Christians, the result being that these children then became Christians. At this point, therefore, the *fatwā* is not about *fiqh* but about the politics of Muslim–Christian relations. Perhaps this is too narrow an interpretation? 'Christian' should perhaps be seen as 'leading to secularism'.

A final comment on this *fatwā*. It cites Mahmūd Shaltūt's *al-Fatāwā* to the effect that there are two sorts of adoption, one without legal consequences and one with legal consequences. This is a serious misreading: the former is describing custody and support for the disadvantaged, a meritorious deed, while the latter is the classical position. In Indonesia, however, adoption proper (*anak angkat*) is a recognised feature of some *adats* under which the child does gain inheritance rights. It is a particular feature of the Minangkabau *adat*, which is founded in matrilineal descent.[512] In short, while this *fatwā* is internally incoherent, it does have the merit of exemplifying the tension between Syariah and contemporary Muslim practice. In this sense it is much more informative than other *fātwā* from the same period, which merely restate the classical position.[513]

THE 'INDONESIAN MUSLIM' WOMAN

Is there such a person, or is the question a false question? Of course she physically exists, but what is she in the *fatāwā* on status and obligation? From one internal view, that of the NU, there are *fatāwā* from the 1930s to the present which can be read to show that the Indonesian Muslim woman *may not* enter into obligation. Whether this is strictly religious, as in public prayer[514] (1932, 1940) or becoming a village head[515] (1961) or going out to work at night[516] (1994), a consistent denial can be shown. However, this is only a surface comment.

The real answer to whether the question is false can be found only in the characteristics of the prescriptions both in *fatāwā* and outside them in other forms of prescribed behaviour. The actual prescriptions of status and obligation vary widely but this is only to be expected and, as such, cannot be an answer. I suggest the answer is not in the content of each source but in the variety and number of sources defining female status and obligation. The woman is multifaceted and multidimensional—there is no single overarching definition. From the point of view of the normative classes, the focus is *makrūh*—that is, where moral issues are prior (below).

The *fatwā* now have to be read with the Marriage Law (1974) and the Compilation of Islamic Law (1991), which define women in terms of modern secular law as to capacity. They also have to be read with the morality of essential duty encapsulated in the *panduan* literature. Already there are two sources for obligation, and the latter emphasises purity of body and mind, an emphasis repeated in public sermons.

Islam has a public face and in many societies, including Indonesia, its public face is identified with the appearance and manners of women in public. To be Muslim for a woman is to act in conformity with a proper understanding of social propriety. Modest dress, which may include the head cover (usually misunderstood in the West as 'the veil'), is an obvious example, as are the respective forms of greeting between men and women. Another aspect, stressed in earlier *fatāwā* (1920s–50s), is the propriety of women going out of the house without permission or alone. The arguments, from 9th- and 10th-century sources, can seem somewhat inappropriate today, when millions of Muslim women have jobs, travel, run businesses and so on. But the arguments are at a different level. They are directed at maintaining an 'Islamic' morality which is both God-given and fundamental to decent society. By its nature the argument has to be general: there must be a sort of timelessness about it, but change by itself dilutes the element of timelessness. Instead the time has become crucial, because 'times' are changing. Can women work and, if so, where is Qur'ānic prescription? More to the point, where is male authority in the face of contemporary challenge? May women actually exercise authority despite their physical nature? The 20th-century answer is yes, because physicality alone is no longer the only criterion determining capacity.

The language of the Qur'ān, however, distinguishes capacity to undertake obligation in terms of physical difference. As we saw in chapter 2, some of the natural expressions of femaleness (menstruation, childbirth) have ritual consequences. The Indonesian *fatāwā* pay particular attention to this fact and go on to equate it with a general incapacity. The *fatāwā* on *walī* are examples, and the different positions taken in our sources show the 20th-century dilemma for Islam. Does the individual Muslim woman have a recognised capacity to give consent to the contract of marriage, as in all other contracts? The answers range from yes/should/can to no. From the 1920s to the present, no one source is consistent or entirely consistent. The Persis *fatāwā* from the

1930s–40s now appear to us more 'modern' than the Muhammadiyah *jawab* of the 1980s. All this comment means is that Persis material is coherent, whereas the Muhammadiyah tends towards less coherence.

Another point at which obligation is variously defined is in *adat* matters. The *fatāwā* responses are again mixed, and range from attempting to incorporate *adat* into Syariah categories to an outright denial of obligation based on *adat*. Neither alternative is logically satisfactory, but this is an area of female obligation where logic is inappropriate on its own. From the individual woman's point of view it is the proprietary interest that is important, not the sanctity of legal reasoning. The duty of the *'ulamā* in their studies is a value in itself, but it is not necessarily always a value transferable to other contexts. Perhaps this is the most important lesson from the data in this chapter.

The prescriptions that express the values of Syariah in society are always going to be problematic, particularly where women are the subject.

4

Is God still the creator? Islam and medical science

ISLAM AND SCIENCE: AN INTRODUCTORY COMMENT

Modern medical science raises fundamental issues in ethics for all societies and religions. Medical advances now force us to confront the nature of our existence. What is human-ness in the light of blood transfusions, organ transplants, autopsies for the purposes of research? May one rightly possess or have a sperm bank, an embryo—are these even 'human'? And where do human rights fit into these issues? For the first time since the new physics of Galileo and the evolutionary biology of Charles Darwin, the question of where the boundaries lie for human life is a question of major concern. With the possibility of human cloning in some form, restricted or not, the issue has become even more revolutionary in its implications. Well might we ask: Is God still the Creator?

In this chapter we take *fatāwā* that attempt to answer at least some of these issues. As is to be expected there is a degree of inconsistency, but it is not so serious as it might be. The reason is that the Qur'ān is so fundamental to any discussion of man (and hence how we know man in science) that all the *fatāwā* discuss the same sets of verses. The Qur'ān itself is the primary text.

Man

The position for Islam is obvious, that man is a special creation: 'We have indeed created man in the best of moulds.'[517] God gave man his nature,[518] which includes an obligation to recognise the truth of Revelation.[519] Man is the inheritor of the earth.[520] Perhaps most striking is the following passage:[521]

> 28. Behold! Thy Lord said
> To the angels: 'I am about To create man,
> from sounding clay

From mud moulded into shape;
29. When I have fashioned him
(In due proportion) and breathed
Into him of My spirit
Fall ye down in obeisance
Unto him.'

On any reading, the Qur'ān is decisive. We are fortunate in having a Persis *fatwā*[522] by Ahmad Hassan, which answers the question: is Adam the first human? He answers the question with an actual reference to Darwin, and his summary is revealing:

Darwin's Theory
Several factors led Darwin to conclude that everything in the natural world has one origin, is from one species. Thousands of years ago, gradually and as a result of several factors and outside influences, plants, animals, minerals and other things were formed. Originally all the animals lived together in one place but as they multiplied there was a shortage of space and some were forced to migrate to other areas. This migration exposed the animals to different climates and environments and as a consequence different types of animals emerged with different forms and habits.

Some became tigers, lions, goats, sheep, birds and so on. Also the animal known as the monkey emerged. Through a process of gradual development (evolution) from the monkey emerged the most perfect and civilised animal—man. So in short man came from the monkey. That is Darwin's theory in short. According to his theory it is apparent that Adam was not simply made by Allah as he was, rather he came from those things which preceded him on earth. Therefore he was not really the first man, just a new form. There were other creatures which preceded him.

The accuracy of this summary is not the point here; the revealing factor is that Ahmad Hassan goes on to show that certain passages in the Qur'ān (e.g. S II:30, X:14) can be read to show that Darwin's theory, as he understands it, is not necessarily inconsistent with the Qur'ān. The conclusion is that Adam was not in fact the first *being*. The discussion has now shifted from '*man*' to '*being*' and, given this premise, Darwin's proposition is thus inadequate rather than false. As to falsity, Ahmad cites a number of Western scientists,[523] whom he interprets as opponents of Darwinism, but his main effort in refuting the theory is from within the Qur'ān. The first citation is from S XXXII:7–8, which relates that man was made from clay; therefore, he concludes, '. . . he did not come from monkeys'. Furthermore, in S III:59 God uses the word 'Be', which he interprets as instant creation '. . . without having to undergo some long process of evolution'. In addition, he cites S XV:28–29, '. . . when I have fashioned him . . . and breathed into him My spirit . . .', which he interprets as explaining the actual process of creation. It is not evolution but an instantaneous creation of the (human) being.

From his own point of view, Ahmad Hassan has disposed of creation and he turns to the issue of priority: was man (Adam) the first being? The answer is no, and he finds this in an interpretation of S XV:27: '. . . And the Jinn race, We had created before . . .'. He emphasises 'before' and, while not discussing Jinn[524] as such, cites also *aḥadīth* from Ibn Mādjā and Hakīm. His conclusion then is that Jinn are prior *beings* but that Adam is the first *man* instantaneously created.

Life derives from God, and its nature and form is determined by Him. But for believers the matter is not so simple, and complications arise around *determine*. What exactly has the will of God 'determined'—does it exclude rational argument as to the content of practical ethics? Of course, this is putting the question in extreme terms but, as we saw earlier, the issue is commonly approached in this way. On the other hand, as Professor Madjid and like-minded scholars have proposed for Indonesian Islam, there can never be a true dissent between faith and reason: both originate in God. Reason reveals Natural Law, which is a given in the natural world. Revelation both confirms Natural Law and goes beyond it to those precepts that are not able to be deduced from the natural order. Ultimately, therefore, the creativity of God determines the moral order. Natural Law, as such, is an insufficient explanation of the natural order, and hence Natural Law is also insufficient. So far as man is concerned, all that can be said is that the human being has the potential for a cognitive capacity and a moral understanding.

What then is the relationship between Natural law and Revelation as to the special-ness of human life? The answer will depend on one's theory of knowledge. For Islam, man's faculty of reason is derived from God,[525] but this very determination is open to abuse and is abused:

> . . . Man doth
> Transgress all bounds
> In that he looketh
> Upon himself as self sufficient.[526]

'Self-sufficiency', in the sense used in this passage, means exceeding the boundaries of the divinely created natural order, a charge often levelled against ʿAbduh (see above Introduction on ʿAbduh and Natural Law). But it does not mean that science is anti-Islamic, as is often supposed by Western commentators. On the contrary, it can be seen as a step on the road to perfecting our understanding of the natural order, of which man is the most important element. However, it is the inferences we draw from this circumstance that cause serious disagreement. These inferences are in fact flexible and vary through time, place and culture. The ethics 'of' Islam and the practice of these are not the same throughout the Muslim world, and never have been. A universal Islamic prescription is impossible, and a search for such is almost certainly more damaging than otherwise. Faith intervenes, and this is the crucial element.

Science

The well-known contemporary example is the search for an 'Islamic science', the motive for which is to render the implications of a new scientific truth less problematic. On the one hand science can be seen as 'natural', in the sense that it derives from nature (i.e. reason), but on the other it is also God-given in the Revealed text. It is its applications that are in question. Contemporary Muslim philosophers of science have not progressed very far as yet. They deny that *any* science can be truly value-free, but 'value' remains relatively undefined. But even leaving aside value, Islamic science itself is somewhat problematic. For example, it is quite common to find the Qur'ān 'proved' by science. This consists in reading contemporary scientific principles into passages from the Qur'ān.[527] The results are otiose because the attempt betrays a serious misunderstanding both of the Qur'ān and of science. The former does not need legitimising; it is, for the believer, the work of God, and it stands on that alone. To suppose that it needs support is to suppose, ultimately, that God needs scientific proof.[528] This is not the Muslim position. Conversely, if the Qur'ān can be seen as justifying science, then the latter has the same validity as Revelation. This cannot be, because, in the Muslim view, scientific facts are always relative in at least two senses. First, the facts of yesterday are often overtaken by new facts—science does not stand still. Second, and related, science is a product of man's mind, and this, by its nature, is not capable of absolute truth.

Enough has been said to indicate some of the difficulties,[529] but it would be wrong of me to give the impression that the Muslim discussion on Islam and science is wholly negative and defensive and that it is invariably naive. This is not so; and there has been and is now a vigorous discussion on the subject. I would like to indicate some of the main features of this, but it should be clearly understood that differences of approach exist between Muslim philosophers of science. On the other hand it should be noted that many, perhaps the majority of Muslim scientists, who are not philosophers of science, are content to live in a dual world—professional scientists on the one hand, and true believers on the other.

But to return to the Muslim philosophers of science: all agree that 'it is the very method of science that Muslim scientists need to tackle'.[530] 'Method' here appears to mean two things. First, that it must be acknowledged that science cannot be value-free.[531] There is no disagreement about this among Muslim philosophers of science. The values are Islamic values. Second, and this is the real problem: what are these values or, more specifically, how and by whom are they to be determined?

The typical Muslim answer is given in two parts. First, science is a matter of civilisation, and each civilisation has produced its own science. Greek science, for example, is not Chinese science, nor is it mediaeval European science, though unlike Chinese science it is connected to it. Islam is a civilisation, and therefore has it own identifiable science. It is not denied that

there are Greek connections. The second part of the answer is, therefore, to identify the distinctive Islamic element or elements. There appears to be, on the one hand, an acknowledgement that the pursuit of knowledge is always subject to a higher (God's) purpose and is hence limited by various definitions of that purpose. This may of course, change from time to time; indeed, the definitions of God's purpose do change over time and vary also from place to place. But however this might be, God's purpose is taken as a fundamental datum. The result, in theory at least, is a limit on free enquiry. On the other hand, and less restrictive in practice, is the view that the material world is a reflection of spiritual value(s) and, provided the obviously destructive is avoided, then knowledge may be pursued as scientific method dictates. In effect, this is the more popular view but, as is obvious from this formulation, the opportunity for disagreement is both immediate and, in fact, quite often taken. We can illustrate these general comments by turning to medical science, but before this some comment from Indonesian *fatāwā* should be cited to illustrate again the reliance on Qur'ān. It is typical of the Persis and the Muhammadiyah *fatāwā*, although on this subject they show quite widely divergent positions.

The Muhammadiyah[532] has a section on *masalah ilmu*—'problems of knowledge/science'—based almost wholly on the Qur'ān. As always with Muhammadiyah, the context is important. The question actually arises out of a *khuṭbah* given at Hari Raya on the general theme of faith, good works or good conduct, but with special mention of *ilmu* (knowledge) in the widest sense. The *jawab* concentrates on this and cites from verses from the Qur'ān. These are, in no particular order: S XX:114, '. . . [God] advance me in knowledge'. The purpose of this *ayat* is to emphasise that God is the source of truth and knowledge; S XXXV:28, '. . . Those [who] truly fear God . . . Who have knowledge . . .'. Here the emphasis in this *ayat*, and in those immediately preceding and following it, is the primacy of faith and the necessity for worship of God; S LVIII:11, '. . . those of you who believe and have been granted knowledge . . .'. The emphasis here is on the true inner knowledge of God—that is, those gifts that the mystic seeks of God.

The Muhammadiyah has chosen to interpret these partial citations as validating '*ilmu*', by which is meant knowledge in the widest sense. The reference is rather a soft reference, which is not to say that the Muhammadiyah have no view about hard science as such—they do (below)—but there is no general theory of science, including medical science. The same is true of NU.

On the other hand Persis, through Ahmad Hassan, certainly does approach the issue, although the generality of its approach is rather lessened by the language of the time—the late 1930s. An extreme example is in a *fatwā* from this time[533] on '*ilmu magnetisme*', the science of what was then called mesmerism and now hypnotism, combined with prediction of the future. Both are problematic in Islam as bordering on or involving magic and superstition. For this reason the *fatwā* is an excellent example of the contrast

between rationality, as defined by the science of the time, and doctrine. (The earlier example concerning Darwin is from exactly the same period.)

The question in the *fatwā* is clear but not simple: does not a science which predicts the future contradict S XXXI:34, '. . . Nor does one know what it is he will earn on the morrow, Nor does anyone know in what land he is to die'? The answer from Ahmad is that there are 'many types of mysterious science on the earth', and to illustrate this he takes two—magic (*shirr*, Ar. *Siḥr*), and mesmerism. The former[534] is forbidden in Islam because it leads the believer towards Satan as well as having undesirable social consequences, such as, tempting individuals towards irregular sex. It has no social benefit. Mesmerism, on the other hand, can be scientifically justified:

> This world is full of hidden forces such that plants, animals and people possess forces or magnetism. Throughout our bodies in our brains, nerves and blood vessels magnetism is stored. It is one of the things that allows us to live. It is produced as a result of the working and movement of electricity in our bodies. People have taught ways to harness this magnetism. Usually the lessons involve concentrating on the method of breathing, sitting and focussing thought.
>
> Looking at these lessons we can see that there is nothing involved which is likely to lead people to polytheism or atheism as in the case of magic. Unlike magic, it does not direct us to believe in or surrender to a creature or the devil, it is all a matter of reason, therefore magnetism can not be said to be harmful like magic.
>
> Given that magnetism is the focus of the question we now need to talk a little about its effects. It allows those who have mastered it to kill disease without medicine, hypnotise people, predict the future (although not always accurately) and many other strange things. People ask—doesn't that put magnetism in conflict with the Qur'an which says we cannot know what will happen tomorrow?
>
> To answer that we need to first explain that there are two types of mysteries: ghaib idlaafie which refers to things which not many people can see or achieve but which can be seen or achieved by one who knows the method. The second is ghaib haqiqi which refers to those things which no one but Allah knows or can know. Not even the angel or Prophet can know about such things except if told.
>
> So what the verse from the Qur'an means is that no one can know the truth or essence or the fruits of what will happen tomorrow.
>
> Therefore there is no incompatibility between magnetism and the Qur'an.

This comment is not of course a reasoned exposition of science in Islamic thought, but it does demonstrate an understanding that magic and science are different classes of actions—respectively not permissible and permissible. But the line is a fine one.

Medicine in Islam

While this is the main topic in the following sections of this chapter, some preliminary comment is called for to link the preceding comment to the

detailed issues below. We are fortunate also that considerable comparative work has recently become available.[535] In particular, Professor Franz Rosenthal has exhaustively examined[536] the issue with reference to Muslim debates from the 10th and 13th centuries (CE). He cites extensively from Ibn Hindu, ʿAbd al-Wadūd and Ibn al-Quff, and the following passages illustrate, in brief, the justification for medical intervention.

> Now look at the person who denies the validity of medicine, and take note that he covers the eye of the sun and ignores the dawn of morn, in spite of the usefulness of physicians and the beneficial outcome of most medical treatments experienced by both mass and elite. Take note further, how such a person impugns the social and political order by (attempting to) deprive people of something useful and to make them dislike some of life's inconveniences. Is there anyone more in need of prayer than he be given the gift of (sound) sense perceptions, and more in need of being chastised?
>
> Thus those who deny the validity of medicine are poor and misguided. They do not deserve to be taken seriously and to be debated. It is obvious that they are wrong. [Ibn Hindu cited in Rosenthal]

The view being put here is that medicine is not an attempt to thwart God's will or that medical intervention shows a lack of true faith. On the contrary, it is an 'ordinary function' like eating and drinking and, as such, is necessary for life itself.

> It has been said that the will or knowledge or power of God, in eternity or following the (prevailing) horoscope as the astrologers say, either requires the health of Zayd and that he will not fall sick for a specified time, or it requires the change and dissolution of his temper. Now in the first case, the science of medicine is not needed, because health is going to stay in the body in question (even) without the application of the rules of medicine. In the second case . . . the application of medicine is of no use.
>
> In reply we say: Just as God has destined the existence of health, He has made the proper application of medicine for the sake of health a reason for health. To a person expressing such doubts (as just mentioned), it can be said that he ought to take respite from the task of eating and drinking. The line of argumentation suggested above either requires somehow satiety and being provided with water, or it does not require it. If it does, there is no need to employ (eating and drinking). In the second case, there is no need either for employing (food and drink) as this would be 'trifling'. All this is absurd, because it would follow from it that the existence of any food means 'trifling', which is a denial of God's attributes . . . It is an obvious error. [Ibn al-Quff cited in Rosenthal]

The same author makes the further point that opponents of this view may themselves be accused of irreligion. God did not create man in jest or for no purpose,[537] and medical science is natural for the purpose of life. To suppose otherwise is to suppose God without purpose, which is to say that

one doubts His existence. The detailed arguments are in Professor Rosenthal's exposition, and it is notable, as he says, that the Muslim scholarship is concise and coherent and demonstrates a good command of the Greek sources.

We may compare these comments with a recent Muhammadiyah explanation of health,[538] which provides a strong contrast. It begins with the general proposition that Islam is a benefit for man and the benefit is both spiritual and physical. The former consists of obedience to God, and there are a number of criteria as to how this is attained and, in an objective sense, to be judged. Thus, a true indication of a healthy mind is that one can accept adverse circumstances. The Qur'ān citations here are S II:216, the passage '. . . you dislike a thing which is good for you . . . and love a thing which is bad for you . . .', and S V:21, '. . . it may be that you dislike a thing and God brings about it a great deal of good'. There are further citations of a like nature demonstrating the necessity for effort (S IX:105), the desirability of mutual help (S V:2), freedom from a mental tension (S XII:87), acceptance of adversity (S LIX:18) and so on. The discussion ends with general comments on the necessity for proper diet and personal cleanliness (S VII:31, V:88).

This could not be further in spirit or method from the mediaeval discussion cited earlier. However, this does not mean that the apparent lack of sophistication indicates incompetence or simple-mindedness. The difference is in the purpose of each explanation and the audiences to which they are respectively addressed. The former to the philosopher of religion, the latter to the ordinary Muslim. Both are of course seeking guidance to the permissible, but the respective contexts for the permissible are not the same. An excessive intellectualism, for example, would be totally inappropriate for the latter audience.

There is another way of approaching the issue, this time from the perspective of the medical profession, and we find this illustrated in a *fatwā*[539] issued in 1960 by the Council for the Evaluation of Health and Islamic Law in the Ministry of Health. The function of the Council is to answer difficult questions on medical ethics. In this case the main question was the correct form of oath that should be sworn by Muslim doctors. The oath in 1960 was essentially Dutch in origin, permitting a reference to the religion or belief of the doctor taking it. The Council replied by relying on an Egyptian *fatwā* in which the same question had earlier been discussed. The main point coming out of this is that the traditional form of Hippocratic oath is acceptable provided each of its composite parts is sworn separately using 'Allah' in the formula. The interesting feature for us is that the *fatwā* lists six components of the Hippocratic model and then justifies each one by reference to Islamic texts. In other words, it Islamises the oath. For example, 'I will devote my life to the interests of humanity' is justified by a *ḥadīth* which I have not been able to identify with certainty but which appears to be a version of Muslim—'What is best for humans is what is most useful for them'. Again, 'I will respect my teachers' is justified by

S XIV:7 and two *aḥādīth*, again probably from Muslim—'Whoever fails to give thanks to mankind fails to give thanks to God'. Next, the phrase 'I shall perform my duties with absolute morality' is justified by a *ḥadīth*—'every person (leader) has a responsibility'. Finally, the two last parts of the oath 'I shall respect human life' and 'I shall not employ medical knowledge against the interests of humanity' are justified by S VI:151 and XXXIII:23–24 plus two *aḥādīth*.

From the oath itself the *fatwā* moves on to discuss the responsibility of the doctor and payment for medical services. The *fatwā* does not distinguish between the two; the whole thrust of this part of the *fatwā* is on duty to compensate in case of mistake or incompetence. Thus:

> Whoever treats another person, although not previously known as a person with any medical knowledge, is obliged to provide compensation if his actions give rise to injury.

This statement is directly from al-Nasāʾī and Ibn Mādjā, so the source is unimpeachable. The passage is immediately followed by a discussion of payment to show that payment is permissible, and the authority is *aḥādīth* from Muslim and Bukhārī. An actual invasion of the body, for example, by way of bleeding is both permissible and must be paid for; the same *aḥādīh* are cited but with the caution that the person providing the treatment must be competent.

Competence is an important point in this *fatwā*. It means medically trained to an acceptable state and international level. There are references to international protocols which are introduced as supporting the Islamic authorities. The *fatwā* concludes with six principles:

(a) The eleven paragraphs of the doctor's oath represents several promises, and if it is preceded by the formulae for an oath in accordance with Islamic law, only then does it become a valid oath.
(b) A promise and/or oath to do several good deeds or avoid evil while fulfilling a certain national service is not prohibited by Islam and even, in several respects, in recognition of the importance and extent of the service in question, may become an act of devotion.
(c) Every paragraph of the doctor's oath represents a separate oath so that, in total, there are eleven oaths.
(d) The contents of the eleven paragraphs of the doctor's oath may be summarised in two parts:
    (1) a promise to perform several good deeds; and
    (2) a promise or oath to avoid several evils.
(e) Remembering the importance and the extent of the role of the medical profession (spiritual and physical well-being of the people from both is dependent upon and influenced by medical treatment). It is not forbidden, and may even be considered an act of religious devotion for a medical candidate to make the promises with the force of an oath to perform good deeds and avoid evils in accordance with the doctor's oath.

(f) When a medical candidate makes a promise with the force of an oath, it means that he has sworn in accordance with Islamic law, although the promise and oath did not originate as a religious obligation. The obligation is then upon him or her to comply with every provision of the oath both in carrying it out and in accepting the consequences of violation under Islamic law.

This passage speaks for itself, but it also takes us into the wider proposition that science, including medical science, is not value-free. The material brought forward in this introduction is various in time and attitude. It all, however, illustrates the same point with more or less complexity. The degree of complexity is not important, on the contrary it is the variety which is important because it tends to the same conclusion about values and ethics.

The human being (body) is sacred because it is made by God. Even corporeal remains retain something of that characteristic. For example, in 1931 the NU decided[540] that a corpse could not be interfered with even for the purpose of studying and possibly preventing the spread of contagious disease. This would not be the position now (see below), but it remains true that the corpse is in some sense sacred as of the clay of Abraham.[541] All *fatāwā* from whatever source emphasise respect and reverence, and the evidence brought forward in this introduction shows a consistent engagement with the idea of man in history—that is, of self- knowledge in Revelation and the implications of that knowledge. Whether this is put in terms of Darwin, of mesmerism or of Qur'ānic and *aḥādīth* citation is not the issue; there is a consistent attempt at interpretation, at understanding what Revelation means, and it is to this we now turn—is God still the Creator?

THE PREVENTION AND DENIAL OF LIFE

This section is about contraception and abortion. Contraception and abortion are not the same. The latter, however one defines it, is always concerned with killing something: is that 'thing' a person, does it have a soul, is it created by God to be one of His creatures? On the other side, the ethics of contraception spill over into these questions: may one rightly accede to birth control in the light of Revelation? In short, at what stage does life begin and who is to determine this, including determining to prevent it? There are various answers which have to do specifically with the nature of things, the natural God-given order.

Contraception

An early *fatwā* from the NU in 1938[542] takes the position that pregnancy is in the normal course of life, and anything that prevents it must be for a certain purpose. A motive that cannot be proven, in this case the possibility of future infection with leprosy, is not sufficient to justify taking a medicine to prevent pregnancy—'*berobat untuk mencegah bunting* . . .'. There is an

air of unreality about this question, and the cited authority[543] for the answer is problematical. There is no discussion as to what 'medicine' means, but the position that an apprehension is not a 'certain' event is quite clearly stated. This is the whole point of the answer and, while it may be an unwarranted extrapolation from the *fatwā* text, it is probable that the '*ulamā*' had in mind the limits on probability (*zann*) arrived at through inference alone. Whether this is sustainable or not, by 1960 the NU had come to terms with contraception by incorporating it or, better, discussing it in terms of classical *fiqh*.

In its *fatwā*[544] the question (Is contraception for purposes of family planning permissible?) is discussed very generally, and the answer is equivocal. However, the answer is not important, it is the generalness of the discussion that is crucial. Contraception is defined as an action which is *makrūh*, reprehensible but permitted. The use of this classification allows for contraception provided a justifiable necessity can be shown, in this case a medically certified danger to the woman's health as a result of too frequent pregnancy.[545] The texts cited, especially '*Kitab Bajuri*',[546] are read to show necessity. The *fatwā* draws no distinction between withdrawal, condoms or the contraceptive pill. However, the use of any of these methods to prevent contraception altogether is forbidden. This returns us to the position stated in the 1938 *fatwā*. On the other hand, excessive birth rates also constitute a danger, presumably demographically, although the argument is not pursued. In short, the achievement of the 1960 *fatwā* is to classify contraception as *makrūh*.

However, the actual method of contraception is not without complication. Barrier methods and the contraceptive pill are one thing, but an actual invasion of the (female) body is another. This is the problem raised by the IUD, and it is not the object itself but the mechanics of insertion that causes the difficulty. In a *fatwā* from 1989 the NU[547] was not prepared to permit its use unless it could be inserted by the husband, who is the only person permitted to see the 'unpresentable parts' of a woman. The classical *fiqh* texts cited[548] are of course wholly on propriety and have no bearing on IUD. Whether this remains the current NU position is debatable.

We can compare these two *fatāwā* with the Muhammadiyah position[549] of the late 1960s. Contraception motivated by a general unwillingness to have children is forbidden. It is not natural in Islam. However, in the case of crisis ('*kondisi darurat*') it is permitted with the consent of both husband and wife. This is defined as danger to the health of the wife (as medically established) and poverty. No authority is cited, and there is no discussion of method in this *jawab* (but see below).

By the 1980s contraception was accepted by the major *fatwā*-giving bodies but the actual method remains disputed, as does the rationale behind the *mubāḥ–makrūh* classes and the boundary between them. This is illustrated in detail in a MUI *fatwā*[550] on population, health and family planning given in 1983–84. The material is in two parts—principles of Islam

abstracted from the Qur'ān and *aḥādīth*, followed by the *fatwā* itself. The Qur'ānic citations are in the form of the passage in Arabic, with a following translation into Indonesian.

S IV:1

> Mankind from your Lord who created you from a single soul. From that soul He created its mate and through them he bestrewed the earth with countless men and women.

This is in fact only half of *ayat* 1, which goes on to enjoin reverence for the wombs (that have borne you).

S XLIX:13

> Mankind, We created you from a male and female and made you into Nations and tribes [*berbangsa-bangsa dan bersuku-suku*] that you might know one another . . .

Again, half the *ayat* is not given; in particular, the passage that immediately follows, 'not that ye may despise one another', is omitted.

S XXX:21

> From his signs he gave you wives from amongst yourselves that you might live in peace with them and planted love and kindness in your hearts. Surely there are signs in this for those who reflect.

In contrast to the two preceding citations, this is complete.

S XXXI:14

> We enjoin man to show kindness to his parents, for with much pain his mother bore him, and he is not weaned before the age of two.

The portion missing here is to the effect that gratitude must also be shown to God.

S II:233

> Mothers shall give suck to their children for two whole years if the father desires this term to be completed.

This *ayat* is in fact long and quite complex. The passage just cited comes at the very beginning of the verse, which is primarily concerned with the obligations owed to the child where the parents are in the process of divorce. The preceding and succeeding verses are concerned with divorce.

S XXV:74

> Lord, grant us wives and children who give us joy and the grace to lead the devout.

This passage is an accurate summary of the original.
S III:38

> Zakaria prayed to the Lord, saying grant me descendants who are pure. You hear all prayers.

This passage is an accurate summary of the original.
S LVII:20

> Know that the life of this world is but a play and pastime, a show . . . and seeking riches and children . . .

This is accurate so far as it goes, but the remaining two-thirds is an admonition that the things of this world are deceptions. Such may in fact lead to a rejection of truth.
S XXVI:88–89

> The day when neither goods nor sons will avail and none shall be sacred but he who comes to God with a pure heart.

This is an accurate rendering of the original.
S LXIV:14

> Among your wives and children are some that are enemies to you . . .

This is a short version of the *ayat* which goes on to enjoin forgiveness and tolerance.
S LXVIV:15

> Your riches and your children may be a trial, but in the presence of God is the highest reward.

This is an accurate version.
S LXIII:9

> Let not your riches or your children divert you from the Remembrance of God. To do so is to suffer loss.

This is accurate.

The question for the reader is whether this selection is eclectic or exact. It is not haphazard because the subject matter is the creation of male and female, their (proper) joining for procreation with the result of issue. There is also a caution: that the (proper) joy in procreation is second to one's duty to God. On the other hand, there is some eclecticism given that the citations are often not completed, so that there is certainly an element of selection for a purpose. The intention is to show that the naturalness of sex has the

purpose of procreation. This is the underlying premise. The five cited *aḥādīth* which follow the Qur'ānic citations reinforce this proposition.

Bukhārī and Muslim:

> Any youth who is able to bear the burden of a family should marry, because in that way he shall better master his opinions and will be better able to guard his honour; anyone who is truly unable to afford marriage, let them fast, as truly the fast shall become the shield which will guard them.
>
> It is truly better for you to leave your descendants in a position of sufficiency than to leave them to become a burden for which society shall be responsible.

From Muslim:

> A Muslim who is strong is better and more loved by Allah than one who is weak.

From Bukhārī and Muslim:

> From a friend of Jabir Ra it was heard: we have already reached our limits during the time of the Prophet, while the Qur'an was still being Revealed.

From Tirmiḍhī and Abū Dāwūd:

> According to the narration of Imam Muslim: we had already reached our limits during the time of the Prophet and this news was received by him and he did not forbid us. Whoever has three daughters or three sisters or two sisters and they are educated and raised well and married off then he shall be granted reward in Heaven.

From Al Hakīm:

> The obligation of parents towards their children is to give them a good home, educate them and teach them to read the Qur'an, to swim, archery and provide subsistence with a good livelihood and ensure that they are married when a match is found for them.

If we proceed from the underlying premise of the Qur'ānic citation—which is the naturalness of sex for procreation—the *aḥādīth* cited are not very convincing from a rational point of view. They do not follow causally, but this is to miss the point. A causal connection is not necessary, instead we are directed towards a 'clouded' context. We have to bear in mind that the issue is the permissibility of family planning in the 1980s Indonesia for a nation that is 85 per cent plus Muslim. The *fatwā* must convince both the least sophisticated and the most sophisticated members of that society. This is why the context is 'clouded', in the sense that the Qur'ānic and *aḥādīth* references are responsive but are not necessarily decisive in the sense of

determinative. However, they are decisive in the sense of providing an aura which is both familiar and necessary. To say that the material just cited provides a context is accurate enough but it does not go far enough. As we shall see from the *fatwā* itself, much more is involved:

(a) Family planning is an attempt by humanity to control pregnancy within the family in a way which does not violate Islamic law, state law and the morals of the Pancasila, for the purposes of securing the prosperity of the family in particular and society generally.
(b) The teachings of Islam validate family planning undertaken for the purposes of guarding the health of the mother and the education of the child in order that it becomes healthy, intelligent and devout.
(c) The implementation of a family planning program including the implementation of communication, information and education, should be based upon awareness and voluntariness although balancing considerations of religion and custom and should be pursued through humane methods.
(d) The implementation of family planning should employ methods of contraception which are not coercive, do not conflict with the laws of Islam, and are agreed between husband and wife.
(e) The use of contraceptive devices within the womb (IUD) in the implementation of family planning may be justified if it is fitted and its use supervised through medical means and by a female medic or, as a last resort, by a male medic in the company of the woman's husband or another woman.
(f) Vasectomy (by tying or severing the vas deferens so that a male is no longer fertile) and a tubal ligation (the tying or severing of the woman's fallopian tubes so that a woman is unlikely to become pregnant) is contrary to the laws of Islam unless in an emergency such as to prevent the passing on of a disease from a mother or father to their unborn child or if the life of the mother will be threatened if she becomes pregnant or gives birth.
(g) Abortion and the regulation of menstruation by any means is absolutely forbidden by Islamic law whether after the development of the soul of the foetus (four months after conception) or before the development of the soul in the foetus (before four months after pregnancy) because these acts represent a form of murder forbidden by the law of Islam, except where necessary to save the mother's life.
(h) In order to control the family planning program, particularly the use of contraceptive devices, every family planning clinic should be provided with personnel who understand the teachings of Islam.
(i) The Government is urged that the performance of a vasectomy, tubal ligation and abortion for the Muslim community should be prohibited and the supervision of the misuse of contraceptive devices which could possibly be employed for evil actions should be regulated.
(j) The Muslim community should prioritize the creation of the family which is prosperous, happy, peaceful and compassionate so that the education and growth of each healthy intelligent able and devout child may succeed.

There are a number of points that arise from this *fatwā*.

First, in (a) we have a reference to Pancasila. We have met this before (above) and, while it is yet another example of the (semi-) official position of the MUI, it also has an extra immediacy for Islam because the ethics of science have now become defined in ideology. Revelation has been reduced, indeed trivialised, in this paragraph. Moreover the reference is not necessary to anything, it is certainly not sufficient to indicate causality. On the other hand, and this is speculation, is the ideology of Pancasila here defined as *ʿilla* (effective cause)? The argument is not actually put, but if it were then the Pancasila would be the major premise. However, Pancasila is itself an empty class, having no fixed referents. The result is that it cannot be a sufficient premise. The Pancasila argument in (a), therefore, is already defective. It cannot lead to a necessary relation (*talāzum*) between itself and any other (middle or minor) premise because it does not itself exist. This is true for all revealed religions when they are reduced to or trivialised to become ideologies.

Second, in (b) the whole focus is on the welfare of the child. Superficially, this is an attractive position to adopt from the 'rational' point of view, but we are not here concerned with attractiveness. Instead the question is whether (b) follows from the earlier citations. It does not: the former is a 'clouded context'. Islam does not 'validate' family planning to promote the interests of children. To arrive at this from S LVII:20, XXVI:88–89 and especially LXVIV:15 is logically perverse. The same is true for the cited *aḥādīth* that follow.

This *fatwā* is in effect an almost wholly Western-derived set of propositions with an 'Islamic' colouring. Propositions (e), (f) and (g) are dealt with immediately below, but as a preliminary we can say that, for all the cited sources, this *fatwā* has a curiously suspended effect because the foundations for the conclusion are absent. The arguments so far, as we have seen, are not convincing; there is no reference to the vast Middle Eastern literature[551] on the subject and the propositions (a) and (b) are clearly driven by state policy of the 1970s–80s.

We now turn to the last MUI propositions, and we take them together with parallel material from the NU and Muhammadiyah. Paragraph (e) of the MUI *fatwā* permits the use of an IUD under supervision. As we have already seen, the NU forbade the use of an IUD. The important point from the MUI *fatwā* is that a condition is introduced and the effect of this is to classify the action of insertion as *ḥarām lī-dhayrih*, which renders the act irregular (*fāsid*) but not void (*baṭīl*). In other words, intention to act and not the act itself has become the primary classifier. This is in contrast to acts classified as *ḥarām lī-dhātih*, that which is absolutely forbidden (see below).

The Muhammadiyah raise two issues: first, the permissibility involved in the mechanics of insertion; second, the nature of the device itself. As to insertion, the moral issue is that where a male doctor is involved in the insertion, the sight of the woman's sexual organs is *ḥarām* in itself, tending towards unlawful sex. The verse[552] 'Nor come nigh to adultery—In it is a

shameful deed and an evil . . .' is cited. However, further in the discussion the participation of a male doctor was held allowable in emergency (*ḍarūrāt*). Although the argument is not explicit on the point, it seems that what appears to be *ḥarām lī-dhātih* (forbidden of itself) has been reclassed as *ḥarām lī-ghayrih*, which has the result of classifying the action as irregular (*fāsid*) on the grounds that the intention is not unlawful sex but the prevention of undesirable consequences. However, the conditions defining *ḍarūrāt* are not specified in detail. Second, what is the nature of the IUD—is it a contraceptive or an aborting agent? The Muhammadiyah is undecided. The MUI *fatwā* has nothing to say about this and the NU is also silent. Is this perhaps the silence of consent? Does not the IUD 'destroy'? (We may help to answer this question later in the discussion of the ensoulment.)

A second aspect of invasion of the body (this time both male and female) is vasectomy and tubectomy. The MUI (in (f) and (i) above) permits it, but only in circumstances of danger (*ḍarūrāt*) for the woman or involving the transmission of disease. This is not an argument from the Qur'ān or *ḥadīth*; *'illa* and *qiyās* are not demonstrated in the MUI *fatwā*. The NU[553] takes another perspective: the operations are forbidden on the ground that they deprive the body of one of its natural functions—reproduction. From this it follows that the operation is permissible only if reversible. The argument is from the *Fatḥ al-Qarīb* (*Bājūrī*), and seems to be based on the recognition of a law of nature derived from Revelation but not directly stated in Qur'ānic terms.[554]

For this we have to turn to Muhammadiyah for the members of which '*kontestualisasi*' is fundamental. It means that Revelation must be understood historically with reference to contemporary social fact. We have already seen that this formulation actually begs the question (see Introduction), but accepting it for the moment, the Muhammadiyah view is that the quality of (family) life is paramount. This comes through very clearly in the work of Dr Fathurrahman Djamil[555] on family planning, where the idea of quality is founded in Qur'ānic citations, for example, S IV:9

> Let those (disposing of an estate)
> Have the same form in their thought
> As they would have for their own
> If they had left a helpless family . . .

Actually, only the last two lines are quoted.

> There is no creature on earth
> But its sustenance depends on God . . .

And in S XVI:72, an extracted passage:

> . . . And provided for your sustenance
> Of the best . . .

The whole of this *ayat* and the one preceding (S XVI:71), and the two earlier passages cited, are concerned with the family in *its relation* to property, which is seen as an essential condition for its existence. The various *aḥādīth* cited[556] are to the same effect. From this position it is not a difficult step to the health of the family[557] as a true context for contemporary Muslim thought. In the Indonesian circumstances this means the limitation of population growth. One can see the argument if one accepts the premise that a healthy family is an essential for the good of contemporary Indonesian *ummat*. If one looks at the Qur'ānic passages cited, and the *aḥādīth*, 'healthy' in fact means sufficiently prosperous to afford a decent standard of living. It assumes some degree of ownership of property having an ascertainable value. Family and property have always been inter-defined in all cultures; what is new for Muslim states is family control as a part of the 'national (property) good' for the *ummat*. Control means child spacing in the Muhammadiyah view, but it also means prevention for the social good, which is defined as economic self-sufficiency.

The first method discussed is *coitus interruptus* (*'azl*), well understood in all pre-modern and modern societies, including the Muslim societies. The *aḥādīth* are well known[558] and need no comment here. It is permitted. There is no discussion, however, as to the possible psychological and physical stresses which the method demands, except that the agreement of the wife is required. It should also be noted that the purpose of *'azl* is not contraception as such, but spacing or delay (*penundaan*) in the timing of conception. This is an obvious corollary of the Muhammadiyah view that the purpose of marriage is to create a family.

We come finally to sterilisation. This is defined as tubectomy and vasectomy. The Muhammadiyah notes that there is a certain amount of demand for this operation in Indonesia, and therefore a ruling is necessary. It is *ḥarām* for two reasons. First, the motive is an unwillingness to have descendants, which is against the purpose of marriage. Descendants (classically the perpetuation of the lineage) are primary in Islam.[559] Second, the operation itself changes the nature of the organism: the body is no longer as it was naturally created. This argument is not elaborated to any extent, but it obviously parallels the MUI[560] view that sterilisation is a form of destruction. However, in cases of medical emergency the operation can be reclassified from *ḥarām* to *mubāḥ*. This option is not open where the grounds are *economic*.[561] As a matter of interest it might be noted that the discussion here is solely concerned with tubectomy; vasectomy is not mentioned.

We can conclude this discussion on prevention with a final NU *fatwā* from 1992,[562] which examines the hypothetical possibility that a contraceptive vaccine made from male sperm, to be injected into the female, is permissible. The question is interesting because it raises two separate but connected issues. First, while semen is a natural product of a male and is indeed the characteristic of maleness, it is also socially defined as

belonging to or at least pertaining to a known lineage. The honour of the lineage, a fundamental premise in Syariah, has to be protected in all events, and, in the case of semen, its storage or collection is forbidden (see below). The fear is that an indiscriminate mixing of lineage(s) may take place. In this *fatwā*, the NU Committee was prepared to permit this form of contraceptive (if it exists) on the ground that its 'abhorrent characteristic'—that is, its lineage identification—has been lost in the process of production. The substance in the vaccine is not the same as pure semen: its character has changed. Second, while permitted, the use of such a vaccine is subject to one condition—that the semen has not been obtained by 'forbidden means'. This is undefined, and leaves open the question of the source of the semen (see below on in-vitro fertilisation).

Abortion

Just as all legal systems do, Islam forbids unlawful killing, which includes abortion[563] and, more recently, euthanasia. There is in fact an NU *fatwā* on the latter[564] forbidding medical intervention to hasten death. This decision is perfectly in accord with Qur'ān (S XVII:31, 33), *aḥādīth* and the standard *fiqh* texts, where only God determines the time and type of death. The euthanasia case is relatively simple but abortion is not, and it is to this that we now turn as the ultimate issue in denial of life.

When is tissue 'alive' in a womb, what is a 'human', and how does one define 'human'? In the West we have been used to approaching these questions in secular or scientific terms for the past 100 years or so. Western opinions are formed on an argument that does not *logically* require God. 'Life' can be neurones, certain sorts of observable activity, a stage in fetus growth, or some other observed signifier. 'Alive' and 'human' in these terms now become a necessary progression, significant (or not) in social-ideological terms. That is, aliveness and human-ness have come to be judged relative to whatever the prevailing ideology happens to be—'social ability', 'good parenting', 'viable family' and so on. I do not deny that these are important factors, but I state them because, again, God is not required. The arguments about abortion are no longer wholly in theology. Even when the churches do intervene, the theological position is not now the only one central to the debate.

These are the 15th- and 21st-century contexts within which Islam now finds itself. But from the internal Muslim point of view, God is of course central, and theology does set the agenda for millions of people. It is science which is relative and Revelation which is certain. However, while science might be ethically only a relative condition, it is also intrusive into the theological certainties as to abortion. How then is this intrusion to be justified, or is 'justification' even the correct question?

The only extended discussion comes from the Muhammadiyah,[565] and even this is in the form of a comment rather than a *jawab* as such. The

Muhammadiyah position is to define miscarriage as (a) medically provoked and (b) criminally provoked, but both are destruction.[566] However, the former is allowed in cases of emergency as a lesser evil (*mudarat*), the reasoning being that the survival of the mother is primary and for the good of the family as a whole. The main authority for this is an extract from S. II:173—the passage which reads:

> . . . But if one is faced by necessity
> Without Wilful disobedience . . .

The justification is that the aim of the Syariah is *maṣlaḥa*, and from this position one may, therefore, permit the otherwise forbidden act. However, this is not the end of the matter. The most interesting feature of the Muhammadiyah position is the discussion of the timing of a (medically) justifiable miscarriage (*penjarakan kehamilan*—this term is consistently preferred to '*abortus*'). The real issue, as with parallel discussions in the West, especially in Roman Catholic theology, is at what moment does 'life' begin to exist? Is the embryo a 'person', and what is a 'person'?

The Muhammadiyah gives two answers which, while they appear disparate, are in fact complementary in terms of the organisation's philosophy of 'contextualisation'. The first is a reference to the WHO definition—that is, the time before which a fetus cannot live outside the womb (28 weeks). This is a reference to modern science, but it does not mean to say that Muhammadiyah accepts that science as such. Instead, having demonstrated, as it were, an acknowledgement of science (as to fetal development), the discussion then turns to classical sources, which provide a second but connected line of approach to the issue. We need to pause a moment here; the medical science cited is *not* the answer, it is the *context* within which the theology is *now* understood. It is going too far to imagine these two sources as a dialectic, but if we take them as a counterpoint (as in music theory), then the Muhammadiyah position becomes clearer; there is assonance and dissonance.

The discussion on the classical sources is about the nature of *rūḥ*,[567] specified by the Muhammadiyah as *rūḥ hayati* (biological living matter which can be animal or vegetable), *rūḥ insani* (human being, person) and *rūḥ jiwa* (with a soul, also psyche of a person). The discussion is short, indeed minimal, but states the following propositions. *Rūḥ hayati* begins at conception.[568] *Rūḥ* at four months is *rūḥ insani*, that is, a human being—and also *rūḥ jiwa*—that is, ensouled. The time of ensoulment, however, is not specific. The issue is the materiality of *rūḥ* and, if this is accepted, the time of a putative manifestation as human. By definition it cannot be seen: it is the breath of life (as in S XV:29, XXXII:7–9). Human life without *rūḥ* is not possible. *Rūḥ* originates in God.[569] The Muhammadiyah explanation does not go beyond this, although we should notice that there are references to recent Arabic commentary mentioning Al-Ghazālī and al-Shahrastānī;

there is also a reference to Maḥmūd Shaltūt's *Al-Fatāwā*, but these references support rather than advance the position already taken.

The conclusion from the two sources, science and theology, is that four months is equivalent to *rūḥ insani* so that abortion after that time is not permissible (but see below). But how does one arrive at the equivalence? The answer seems to be by an exercise in Qur'ānic interpretation (*ta'wīl*, Ar. *ta'wīl*) of the Suras just cited. These are all concerned with the process of creation of man, for example: S XV:29, '. . . when I have fashioned him and breathed into him My spirit . . .'; S XXIII:13–14, '. . . We made the sperm into a clot of blood . . . then of that clot We made a lump . . . Then We developed out of it another creature . . .'; S XXXII:7–9, '. . . He fashioned him in due proportion and breathed into him something of His spirit . . .'. It is the fashioning or making, and the *rūḥ* creates a servant of God with a status above that of animals.

Perhaps we can reconstruct the Muhammadiyah argument for equivalence as follows:

- The WHO gives us four months, after which the embryo is 'human'.
- The Qur'ān gives us the process of creation, which is ensoulment.
- The philosophy in *ta'wīl* allows us to make a connection which is *not causal*, but permits us to accept science as a *confirmation* of the Qur'ān.

Rūḥ is thus the category within which both science and Revelation can be reconciled. The degree of reconciliation is always unclear, but what is clear is that science is setting the agenda in the sense that it determines 'fact'. But not even science can determine 'time' of life: such a determination is a matter for ethics, about which there is no agreement within science or Islam.

There is a logical objection: what of the pre-four-month embryo? To accept the argument put above is to accept that an embryo is nothing but tissue with the potential to become 'human' and 'ensouled'. Is one justified in denying that absolutely certain result? The earlier *fatāwā* (above) denying the use of IUD on the ground that it is an aborting agent would suggest that the answer is no, it is not. But there is another argument: that potential (to grow towards human in this case) on its own is insufficient to make preservation obligatory. Much more is needed—the right social conditions, care, instruction in religion and so on. Unless the latter conditions can be guaranteed, on analogy from contemporary circumstances, then the answer is yes, it is permissible to destroy that embryo.

There is no *fatwā* answer simply because theology does not and cannot tell us at what stage an embryo acquires *rūḥ*. Any argument pro- or anti-abortion cannot be by way of causal connection. The link between WHO and Qur'ān is not a reconcilable link but one by way of elision via *ta'wīl*, which is always uncertain.

The conclusion is that abortion is always destructive of God's will. As we have seen, it may be justified on medical grounds, but not otherwise. The

only justification here is the interests of the woman or, possibly, family, which can mitigate but not wholly excuse the action. It is a distribution of weight of blame, and this can never be established by a simple causality.

The Muhammadiyah discussion illustrates the dilemmas. It shows us also that arguments from cause have no utility. Instead, it is context and elision which define the abortion issue. There is no certainty of result to achieve binding principle. The only certainty is an uncertainty of dissonance, in science and Revelation. The same theme continues in the next section, although here some of the issues are clearer.

THE PRESERVATION OF LIFE

As a concept, this is not difficult to understand. To help the sick and wounded to recover is obvious. It is at least an act of charity and, in many cultures including the Muslim, it is a duty. Even the so-called 'laws of war' acknowledge this. However, for Islam, as for other religions, the preservation of life in our contemporary period raises important issues for practical theology and law. These issues arise out of modern medical science: how, when and why is life to be preserved?

The *fatāwā* in this section come from MUI, NU and Muhammadiyah and, crucially, from national health agencies. The most important of the latter is the Council for the Evaluation of Health and Islamic Law (see also above) of the Ministry of Health, with which we begin. The reason for starting with this material is that the issues are immediate and call for a ruling, which then becomes practice and part of the national health policy. The Indonesian state validates a medical practice on the grounds of its authorisation or at least acceptance by a constituted Muslim authority. Out of many *fatāwā* given by the Council I have chosen examples[570] that illustrate crisis issues from 1955 to the early 80s.

Invasion of the body

There are two Council examples, both from the 1950s—one on autopsy (below), and an earlier one on the taking of samples of body fluids by way of extraction with fine needles which do not damage the skin or blemish the body in any way. The purpose was to detect disease and to prevent the outbreak of an epidemic.

The corpse

This *fatwā* (No. 5/1955), from the Council for the Evaluation of Health and Islamic Law, begins by stating 'relevant principles of Muslim law', and is in two parts. First, as to infectious diseases. Here we have two *aḥādīth* from Bukhārī, and Bukhārī and Muslim: 'A person with an infectious disease must never approach a healthy person', and 'When you hear of an epidemic in a nation do not enter the region . . .'. The *fatwā* concludes from these that

there must be separation of the (possibly) infectious from those as yet unaffected. Second, the respect and honour due to the physical and spiritual integrity of a diseased person is emphasised from a number of sources. These include S XVII:70, '. . . We have bestowed blessings in Adam's children . . .', with supporting *aḥādīth* from Bukhārī and Muslim and Abū Dāwūd.

Hadīth from Bukhārī and Muslim:

> Sahl Bin Hunaif and Qais Bin Sa'ad were seated in Qadisiah when a corpse came before them and they stood and a person said to them 'the corpse is that of a native of the land but not that of a Muslim'. They replied 'the Prophet said that we must stand in the presence of a corpse' and when someone asked the Prophet what one should do if the corpse was that of a Jew, he responded 'are they not also human?'

Hadīth from Abū Dāwūd:

> Jabir relates that he was with the Prophet when he saw a corpse and the Prophet stood in respect. When they made to help carry the body they realised that it was that of a Jew and they said 'Prophet, this is the body of a Jew' and the Prophet replied 'When you see you must stand, death is a terrifying event.'

The *fatwā* then proceeds to the interests of the living and the duties one owes towards the dead (see also below on autopsy). The authority cited here is the well-known verse S VI:119, '. . . [the forbidden is permissible] when you are constrained'. And S XVI:15, '. . . whoever is compelled through necessity, intending neither to sin nor to transgress . . .'. There is also a reference to a standard *fiqh* text, al-Nawāwī's *Minhāj*, where it is allowed that jewels may be removed from a deceased person's body when that person had ingested the object before death. The same rule applies to allowing the recovery of a baby from the body of a dead mother. In other words, that which is of value may be recovered; the intention is not to dishonour the corpse but to save something or someone otherwise lost.

The formal *fatwā* reads:

> While there is no other way of determining that a corpse carries a contagious disease, in the interests of those who are living, lung and liver injections are permitted.
>
> The Council proposes that:
>
> (a) the government and medical officials only permit injections when necessary;
> (b) the injections should take place as quickly as possible so as not to hold up the burial of the corpse;
> (c) the government should always provide maximum information regarding contagious diseases and means of preventing them in areas in which they are a problem;

(d) the explanations provided must be understood by the local people so that the sick people or family immediately report to health officials for a blood test to avoid the need for injections after death;
(e) in carrying out their task with respect to the injection of corpses, researchers should comply with the rules of propriety imposed by Adat and religious procedures required in the relevant region, for example by greeting the corpse with 'Assalam Allaikum';
(f) the relevant health officials and researchers must be given training in the local Adat norms and religious procedures;
(g) for the implementation of the fatwa the government should release joint instructions from the Ministers of Health, Religion and Internal Affairs.

This *fatwā* reads like, and in fact is, a manual for practice. The Islamic element is not decisive; medical practice has set the agenda, and Qur'ān and *aḥādīth* only support it or justify it. It is interesting that no argument is sustained on *maṣlaḥa* although it is fundamental to the *fatwā*. Public interest seems to have been assumed; it is certainly not argued for in 1955. As we shall see, this is not the contemporary position, and this *fatwā* therefore may be taken as one of the last pre-public interest rulings. Without exaggeration it might just represent a watershed in Islamic intellectualism engaging in the modern world. Both the Djakarta Charter of 1945 (see above) and this *fatwā* now seem curiously limited compared with evidence from the 1980s–90s. This is not a benefit of hindsight comment; it is true because the standard of reasoning in *fatāwā* quite suddenly became much more sophisticated (see Epilogue).

This can be illustrated by taking a series of NU *fatāwā* from the 1930s. They fall into two groups—the 1931 group (three *fatāwā*), and the 1934 group (two *fatāwā*). The first[571] forbids the injection of a corpse for the purposes of studying a disease that is spreading. The reason is that it 'stains' the respect that must be shown to the corpse. The Arabic reference cited is uncertain; it looks to be from Bā-Faḍl's *Al-muqaddimat*, probably through the version by Maḥfuz at-Tarmasī—but, I hasten to add, this attribution is not proven. The reason for raising attribution at all here is that the 1920s–40s sources of authority are crucial to our assessment of what the *fatāwā* actually mean. The next *fatwā*[572] from the NU confirms this: may one remove the teeth, which have gold in them, from the body of the deceased? The answer is equivocal. Generally, it is not permitted as a matter of principle, but for an adult female or a child it is permitted if the heirs wish. The question is left hanging if the deceased is an adult male. The sources here are Sayyīd Bakrī's *Iʿānaṭ aṭ-ṭālibīn* and (possibly) Nawāwī Banten's *Nihāyat az-zayn*. The third *fatwā*[573] is quite remarkable: how is a corpse to be treated when it is one of two joined twins (presumably Siamese twins)? The answer is that the bodies may be separated if without danger to the living; if not, they must be kept joined (with prayers for the dead one) until the dead one decomposes and drops off, when it should be buried. The intention is to preserve life, which allows for a physical invasion. The authority cited is the *Faṭḥ al-wahhāb*.

The same theme of decomposition is pursued in the two *fatāwā* from the second group, given in 1934. The first[574] discusses whether a grave plot containing a decomposed corpse can be used again, and the second[575] whether a plot containing bones only can be used anew. The answer in both cases is yes, provided decomposition has been advanced enough so that no flesh is present. The same authority, *Faṭh al-wahhāb*, is cited.

If we compare the Council *fatāwā* of the 1950s with the NU *fatāwā* of the 1930s, we can be forgiven for concluding that they are written from standpoints which have nothing in common: they are light years apart in sources and approaches, yet dealing with the same issue. There are only 20 years separating these *fatāwā*. The obvious explanation is that those respectively responsible come from vastly different educational backgrounds which, epistemologically, have nothing in common. This is despite the fact that the Council actually put forward Qur'ān and *aḥādīth*. The members of the Council do not use the material in the same way as the NU '*ulāmā*', nor do they cite *fiqh* texts. Even as late as 1962 the NU forbade[576] the removal of cornea from a corpse (for transplantation) on the ground of dishonouring the corpse, and it was not until 1981 that its possibility was even considered (see below). In fact, the NU did not deal with the invasion of the body between 1930 and the 1960s, a hiatus of some 30 years.

Autopsy

The issue first arose for the Ministry of Health's Religious Council in 1953, prompted by concern in the medical profession about the lack of bodies for research and training. However, it was not until 1955 that the Council was able to issue a *fatwā* (No. 4/1955).[577] Again, science sets the agenda. There is in fact an extensive preliminary discussion of medical submissions on the needs for autopsy by science—for research, training and the prevention of disease. It was pointed out the national interest as well as international obligations are involved. The Council also took evidence of national medical practice in Muslim and non-Muslim countries, including international and local policies as to death certificates, family permission, and autopsy for police and judicial purposes. This material takes up almost one-half of the proceedings and it is only after this exhaustive account, which is much more than a mere introduction, that Islam is considered.

The actual *fatwā* follows the Council's standard form, beginning with Qur'ānic and *aḥādīth* authority. The former is S XVII:70, 'We have honoured the descendants of Adam', and the latter is the well-known *ḥadīth* related by Abū Dāwūd and Ibn Mājah, 'To break the bones of a corpse is as great a sin as breaking the bones of a living person'. These are followed by opinions of Muslim scholarship on the two well-known questions: (a) whether it is allowed to operate on a corpse to recover swallowed jewels, and (b) whether a living (or thought to be living) body can be recovered from the body of a dead mother. The usual references in both cases is to al-Nawāwī's *al-Majmū*, but in this instance the Council canvasses other

sources. Most importantly it gives the view of all four Sunni schools, but not directly. Instead, they are taken from a *fatwā* written by the Mufti of Egypt and published in *Majlis Al-Azhar* of 1936. The opinion of the Mufti, cited with approval by the Council, is that autopsy is permissible when need (here benefit) can be shown. Each case must be justified separately. The preferred method for justification is via *qiyās*, and it is around the proper use of *qiyās* that discussion is concentrated. As might be expected, the main emphasis is on the Shafiʿī texts, particularly al-Nawāwī's *Majmū*, but texts especially from Mālikī and Ḥanafī are also cited in support. In addition, the Mufti cites S LXXXII:8, LI:21, XXXVI:38 and XVII:85 which, when read together, open the possibility to use knowledge or new knowledge. In short, medical science is not as such a problem in this instance and is indeed a valuable addition to existing knowledge.

The Council then takes a further *fatwā* (1938) from Egypt, this time from the Fatwā Council at Al-Azhar, which was in fact responding to a request for an opinion from the Fatwā Council of Bhopal (India). Exactly the same ground is traversed as in the earlier *fatwā*, though perhaps in somewhat more detail. The reasoning and the result are the same, except possibly that the emphasis on public benefit being the overriding consideration is more clearly expressed.

While there is plenty of evidence in these two Egyptian *fatāwā*, the Indonesian Council is not fully satisfied and turns to yet a third source. This is an opinion written by Ḥasanayn Muhhammad Makhlūf (Muftī of the *Dār al-Iftā*, 1946–50) on medical matters. The Muftī cites a selection of the same authorities already described and comes to the same conclusions—that is, that autopsy is permissible on the basis of public interest and that it may be technically justified by *qiyās*.

It is only at this point, after three rather repetitive sets of evidence, that the Council actually issues its *fatwā*:

> Fatwa No 4/1955
> - Humans are honoured creatures which must be respected in life and death.
> - Actions towards the body and spirit may not be disrespectful to the living or the dead.
> - Autopsy in the interests of medical science, medical education and the pursuit of justice is an emergency activity for prescribed purposes.
> - The interests and benefits of autopsy for a living community are paramount to preserving the unity of a corpse.
> - Islam prioritises the general public interest over that of the individual and the interests of the living over those of the dead without detracting from respect for them.

The Council complements this with a further ruling, *Fatwā* No. 7/1957, which set out the conditions under which a corpse might be used for medical education. It reads as follows:

- Corpses collected in a morgue of a hospital must be wrapped in a clean shroud in such a way as to preserve the honour of the deceased.
- Before the corpse of a Muslim is sent to an anatomy laboratory of a medical facility and before it is injected with preservative all the requisite religious ceremonies must be completed [washing, wrapping in a clean white cloth, performing the appropriate prayers].
- After the corpse is placed in [an] anatomy laboratory the body may be used by the students of the medical facility to the extent necessary, always preserving the honour of the corpse. The legal principles upon which this process is based are the same as that for Fatwa No 4/1955 regarding autopsies.
- When the corpse has been used for the purpose of anatomical study the body parts are to be gathered and the body reformed to the extent possible and wrapped as usual.
- After wrapping the corpse it should be immediately buried in the usual way for a Muslim, facing Mecca to the extent possible.
- The time between the prayer for the dead and the burial must be as short as possible.

These two Council *fatāwā* have been immensely influential, at least at the official state level. Thus the MUI, in its *fatwā*[578] of 1992, followed absolutely the earlier 1955 *fatwā* as to autopsy. The only addition it made was to forbid the placing of corpses on display in museums.

The matter is not so clear for the NU. As we saw earlier, the NU forbade autopsy in 1962 but in the context of organ transplants from a corpse. It was later prepared to at least consider the possibility (see below).

Finally, the Muhammadiyah permits autopsy for the purposes of health and medical education. This was decided as early as 1987, and the relevant *jawab* is included in the current publication[579] (see also below).

Plastic surgery and sex change

These are recent developments, and have caused much debate in Indonesian Muslim circles. The past few years have seen considerable *fatāwā* activity.

The MUI, in a short *fatwā*[580] of June 1980, forbids sex-change operations as being against 'the spirit of Islamic law'. There is also a reference to the Qur'ān, S IV:19, which is in fact concerned with dowry and showing kindness to women. The following verses (IV:20ff) are concerned with marriage in general. The citation of this *Sūra* is thus contextual rather than evidential as such. This *fatwā* also maintains that a sex-change operation does not affect the status at law of the person concerned: there is no legally recognisable change. On the other hand, the *fatwā* also says that a transvestite/hermaphrodite may be transformed into the sex with which he/she has the greater physical identity. This is a subject of abiding interest in Indonesian Islam, and the NU published a *fatwā*[581] of no less than 11 pages, an almost unprecedented length, in 1979. It is a complex *fatwā* and takes us to Qur'ān, *aḥādīth* and later scholarship. The *fatwā* is in four parts, each with

supporting sources of authority; I may say here that the sources are the cause of quite considerable difficulty (see below).

The first proposition is that a 'sex-change' operation is forbidden because it changes a creation of God and will deceive people. The Qur'ānic reference is S IV:119, which is on the deception practised by Satan; the surrounding *ayat* (116–121) are to the same purpose. *Ayat* 119, as cited in the *fatwā*:

> I will mislead them
> And I will create
> In them false desires; I will
> Order them to slit the ears
> Of cattle, and to deface
> The nature created
> By God . . .

This verse and the scholarly commentaries cited[582] are to the effect that a change in genitalia, for the sake of change or for personal pleasure, is forbidden. The body is, after all, *khalq Allah* (created by God), though this does not mean to say that all surgery is forbidden. If need can be shown it is permitted,[583] but the NU in this *fatwā* tends to take a strict approach as to 'need', particularly with reference to genitalia. This does not mean that the subject is closed; the definition of sexual identity, sex change, and hermaphroditism has a long history in Islamic law and theology.[584] The NU theologians are aware of this, and this brings us to the next part of the *fatwā*.

Second, it was decided that for those whose genitalia are not in conformity with their internal reproductive organs, an operation to correct the genitalia is permitted *provided* a necessity can be shown. 'Necessity' means necessity as recognised in Islamic law or an important necessity. These two definitions are in fact conflated to mean an operation is permitted to relieve pain, danger to health, or a serious deformity with undesirable social effects. There is even a reference to female circumcision. More important is the major underlying assumption—that human sexuality and hence legal definition is fixed, stable, and that therefore the purpose of an operation on genitalia is to correct an aberration so as to reveal the 'true' person. 'True' is judged by the criteria of the internal reproductive organs. Third, and following from this position, for those whose genitalia are in conformity with their internal reproductive organs but are deformed in some way, an operation to correct the defect is not only permissible but recommended.[585] The purpose, in other words, is to implement the true nature of the individual concerned. Finally, with a person who has two forms of genitalia, that which is at odds with the internal reproductive organs may be removed. The converse is not permitted.[586]

This *fatwā* shows an impressive command of scholarly sources, but, as I said earlier, these are not without difficulty. This can best be explained by

comparing the NU *fatwā* to the one given in 1988, by Sayyīd Ṭanṭāwī, Muftī of Egypt, on the same subject. The latter arose out of a celebrated case of a sex-change operation to convert a 'man' into a 'woman'. The Egyptian *fatwā*[587] relies pre-eminently on Ibn Ḥajar's *Faṭh al-Bārī bi sharḥ Sahih al-Bukhārī* dealing with hermaphroditism. There is the same reliance in the NU *fatwā* as the basis for reasoning. The other references, for example to al-Baydāwī,[588] ('Baidlawi') are less clear and appear to relate primarily to the duty to treat the ill. Up to a point this is understandable: hermaphroditism is commonly thought of as an illness.

The same position is taken in the Muhammadiyah *jawab*: an operation to establish the true gender (*operasi penegasan kelamin*) is permitted,[589] and the authority is S IV:118–119 (the whole passage). As we saw with the NU discussion the key passage is '. . . to deface the nature created . . .', which is interpreted to mean that it is permissible to uncover or make apparent the true gender in accordance with the inner reproductive organs. Operations for the purpose of beautification alone (*operasi plastik*) are forbidden.[590] It is the correction of deviance that is the necessity. The same position is adopted in respect of homosexuality, and a *jawab*[591] of 1998 reaffirmed this position (citing S VII:80–81, XXVII:54–55) and extended it, by analogy, to lesbianism.

Transfusions and transplants

Both procedures are invasions of the bodies of the donor and donee, and the *fatāwā* to be described here are related to and extensions of those in the last section. However, there are particular features that require separate treatment. The three sources, MUI, NU and Muhammadiyah, are in general agreement, using similar arguments though with different emphases.

There are two *fatāwā* from MUI. The first,[592] of June 1979, is on whether one can bequeath corneas for later transplanting. The request for the opinion actually came from the Indonesian Red Cross. It thus raises two issues—the propriety of the gift under a will, and the actual removal of the cornea from the deceased and its subsequent transplant. To take the question of will: the classical forms of *wasiat* (*waṣīyī*) of course have no provisions for such a legacy, and the MUI do not discuss it in detail. Instead, the Majlis took the view that such a donation was lawful provided the heirs agreed at the time of making the will. This is clearly an extension of the principle that the heirs may agree to variation.[593] The same provision appears in the *Kompilasi Hukum Islam* (1991, Book II). The second part of the *fatwā* begins by citing the well-known *aḥādīth* (Abū Dāwūd and Ibn Mādjā) forbidding interference with the body ('breaking the bones'). This establishes the basic principle—that invasion of the body (above) is not permitted. From this point the *fatwā* proceeds to state exceptions derived from a *fiqh* text,[594] itself derived from al-Nawāwī's *Majmū ʿsharḥ al-muhadhdhab*. The exceptions are that surgery may be undertaken (a) to

remove a living baby from the body of the dead mother and (b) to remove jewels from a corpse which had been swallowed by the (now) dead person and which belonged to another. The views of all four Sunni *madhhab* are canvassed in the answers and the consensus, accepted by MUI, is that the surgical procedure is justified in both instances. By analogy, therefore, the interests of the living over the dead are prior and thus a donated cornea may be taken and used. The *fatwā* intimates, although it does not clearly state, that the latter use is ethically superior to the jewel instance and on a par with saving the life of the child.

The second *fatwā*,[595] of June 1987, concerns the permissibility of heart transplants. It was allowed, primarily on the citation of al-Nawāwi' (above). Obviously, the MUI members would have had the earlier *fatwā* in mind. However, there is an addition before citing al-Nawāwī. This is a set of citations from Qur'ān which do not appear in the earlier *fatwā*. From the Qur'ān we have (from the MUI version): S V:2, 'Help one another in what is good and pious, not in what is wicked and sinful'; S II:195, 'Be charitable. God loves the charitable'; S XVII:70, 'We have bestowed blessings on the children of Adam and guided them by land and sea. We have given them good things and exalted them above many of our creatures'. These citations are all reasonably accurate, and the principle MUI draws from them, is:

> The status of humankind is that of the most honoured creatures who must be respected and treated kindly and with honour while alive and after death.

This is the context from which the actual *fatwā* comes. It might mean no more than that organ donation is a charitable act and should, therefore, be encouraged. On the other hand, it can also be seen as stating an Islamic 'ethic' for modern science.

While the NU comes to the same conclusions, it has not been without difficulty; the same conclusions involve different lines of reasoning. In 1962 the question[596] was whether a cornea might be removed from a dead person for transplanting. The *fatwā* forbade the operation on the grounds that (a) the benefit does not compensate for the dishonouring of the corpse when an operation is performed on it and (b) it is forbidden to connect a part from one person to the body of another. The *fatwā* specifically dissented from a *fatwā* from the Mufti of Egypt permitting the operation. The NU *fatwā* does not give details of the Egyptian *fatwā*, which remains unidentified.[597] The sole authority relied on by the NU *fatwā* appears to be the *Nihāyat al-muḥtāj*, which is described in this *fatwā* as '*hasyiyah ar-Rasyidi*' (i.e. Ahmad al-Maghribī ar-Rashīdī). This ascription remains open to question; there is not enough detail to be certain.

A further *fatwā* in 1981 from the NU[598] is on the same subject, but now two opinions are given as alternatives. The first is that the procedure is forbidden, and the second is that it may be permitted in case of necessity. The latter is not defined, but whatever the definition might be, it is subject

to conditions—that only human corneas are used and that the donor and donee be of the same religion. Whether these conditions still apply is another matter. More important are the sources cited to allow that transplant. The *fatwā* preceding (No. 331/1981) is on the mechanics of IVF. Exactly the same sources are cited in both cases, although the medical procedures are different in technique and intention. The common factor is interference in or manipulation of living tissue. But instead of contraception and abortion (above) we have maintenance and 'creation' (below) of life. The common factor—the *'illa*—is thus the honoured and respected status of the human body. We have returned to the MUI quotation, which we can now see as an absolute position.

The sources are the standard *fiqh* texts and include *Fatḥ al-wahhāb, Mughnī'l-muḥtāj, Nihayāt al-muḥtāj*, all various rescensions of al-Nawāwī's *Minhāj*, as well as others. The point is that the *fiqh* cited by the NU and, to some extent by MUI has, by the 1980s, become a source of recourse. It is not the whole of these texts, but the same chapters and page numbers that are being used. It is a tiny part of the whole that has become elevated to a special authority in 'body' matters. For example, the two *fatāwā* following the one just described approved, *without citing authority*, eye banks[599] and heart and kidney transplants.[600] However, in 1989 we can find an apparent reversal of this position, relying on *exactly the same sources.* Transplants are permitted in case of necessity. However, in this *fatwā*[601] the operation was forbidden because the organs were donated by will. As we saw earlier, the MUI permitted this with the consent of the heirs. The NU said no to the bequest on the ground that the body, and all its parts, belong to God and cannot be given away. A person does not 'own' his body and so cannot transfer or donate it by will. The most that one can have is a trust (*amana*) of the shell or vehicle for a life, and when this ends the body must be returned to God as it remains at the time of death. This is a perfectly sound theological position, but it ignores the earlier NU *fatwā* and the actual practice of transplants.

The Muhammadiyah, on the other hand, face the problem squarely by acknowledging Qur'ān and *ḥadīth*, which prohibit invasion of the human body but also recommend medical cures for illness and deformity (e.g. S II:84, 195 and *aḥādīth* from Abū Dāwūd and Muslim). The solution is to prioritise, to get a scale for determining public benefit (*maṣlaḥa*)—'*prinsip skala prioritas dalam menerapkan konsep maslahat*'. The application of *maṣlaḥa*, however, is restricted or may be restricted by interpretation of Revelation. The discussion of tissue transplant (*jaringan*, which covers all forms of transplant) begins with medical definitions.[602] First, '*homonim*', transplant of tissue from one part of the body to another part of the same body: this is permissible (*mubāḥ*). Second, transplants involving animal tissue: this is problematic, and whether permissible is not decided. Third, transplants of tissue from one person to another ('*heteronim*'), and this is the subject most fully discussed. It is described as involving 'contradictions'

because it involves either injuring a living donor or violating the honour/sanctity of a corpse. The often cited S II:84, '. . . shed no blood amongst you . . .' and S II:118–119, '. . . deface the nature created . . .' are discussed in detail. The Muhammadiyah position is that both extracts must be read in their respective contexts: that is, the first is to do with killing and the second is to do with Satanic promptings, neither of which is relevant to tissue transplant. This is important because the *aḥādīth* (Abū Dāwūd, Muslim, see above) that recommend curing disease therefore take priority. The *naṣṣ* in these *aḥādīth* is, therefore, a matter properly to be classed as *maṣlaḥa*.

The question then arises as to how *maṣlaḥa* is to be defined in tissue donation. The answer is to turn to the idea of scale of priority, and this comes down to choices in terms of *mudarat*—that is, preferring the lesser over the greater evil. An assessment of this is a matter of reason (*tarjih*) in a very broad sense. The result is that a donation from a living donor cannot be justified because a lesser evil cannot be shown or identified—the donor is inevitably subjected to injury and there can be no *maṣlaḥa.* However, taking tissue from a dead donor can be approved on condition that the recipient is in a critical condition and that all other methods have been unsuccessful. *Ḍarūriyyāt* must be (medically) demonstrated, and once this circumstance is established then *maṣlaḥa* can be the operative principle. The preservation of life (*menjaga jiwa*) takes priority over respect for the corpse.

There is one further point here—the criteria for establishing time of death. The main point made is that donation should be made after clinical death (*kematian otak*) but before cell death (*kematian sel*). But the nature of the former remains in doubt from the point of view of Islamic philosophy. Is it comparable with the loss of *hayat*? The question is undecided and the eventual answer is likely to be ambivalent at best because the terms of reference of science and *falsafah* are not comparable. Having said this, there are two reported *jawab*[603] where clinical death, the time and certainty of which is not disputed, did permit cornea transplant to take place.

Finally, an issue of contemporary importance: can animal tissue be used for human transplant? Only the NU has discussed the question, and in a *fatwā* of 1994[604] came to no real conclusion. The question was whether organs taken from a pig could be transplanted into the human body. The *fatwā* is quite long (just over three pages), but most of it is taken up with definitions of 'transplant'. The term is understood to mean the transfer of an organ from one place to another, including cornea, kidney, heart, which is one of (a) autotransplant (within the same body), (b) homotransplant (from one person, alive or dead, to another living person), and (c) heterotransplant (from animal to human). This last often results in rejection, although some procedures such as grafting pig skin onto human burn victims are often successful. This last is permissible in cases of extreme need and the transplant of a pig heart likewise. However, the use of pig bone

is not permitted because other material is available. The *fiqh* texts cited, all on necessity to preserve life, include *Nihāyat al-muḥtāj, Tuḥfat al-muḥtāj*, and *Kanz al-Rāghibīn* (*Qalyūbī*).

Milk banks

In the early 1970s the Jakarta hospital established a human milk bank through which mothers with an excess of milk could express the surplus and have it stored for babies whose mothers had insufficient milk. A number of *'ulāmā*' questioned the practice on the ground that this was equivalent to *raḍā'*, suckling which amounts to (foster) kinship. A child who was given such milk was, in strict law, *saudara sesusu*—that is, one suckled at the same breast as the donor's own child. The two children would be unable to marry. More serious, if the donor was anonymous, then the possibility of an unknown incestuous union would certainly exist. All the babies in one hospital with a milk bank could actually be related in terms of *raḍā'*. It is the transfer of life-giving fluid, and it is here that blood became an issue for the Muhammadiyah. Does a blood transfusion create a link between donor and recipient so as to create repercussions for marriage in the same way as *raḍā'*, as fosterage? The Majlis Tarjih[605] was not to be drawn in, and refused to make the equivalence. There is no discussion and no authorities are cited, and certainly any possible *'illa* (necessary cause—here, life fluid) is not mentioned. Although it is an interesting point, it would almost certainly fail in terms of proof.

It is practicality that seems to determine the propriety of milk banks. There are a number of views, and we begin with a *fatwā*[606] from the Ministry of Health Council for Evaluation of Religion given in 1976. It is elaborate, running to over 30 pages; the important point is that the medical side sets the agenda from the very outset. The initial question was: why have a (human) milk bank at all—was not some other milk suitable? This was answered in a long submission by two doctors who, relying on Western studies, demonstrated that a child's physical progress was superior when fed breastmilk. Tables were produced showing the different chemical compositions of breast- and cowsmilk. Further tables were produced showing comparative mortality rates (especially for those under the age of 5 months). Evaporated milk and reconstituted milk were also considered in the evidence. The result was that human milk was recommended on health grounds, with the corollary that because of the shortness of supply there was a national need for a milk bank. There is no doubt that the quantity and detail of the medical evidence is intended to determine the matter. That this is not supposition is clear from the quality of the 'Islamic' evidence, which consists of short citations from standard Qur'ān and *aḥādīth* sources followed immediately by rather terse interpretations. To be fair, 'dismissive' may be a little strong, but the result is to restate the Shāfi'ī view, which the Council summarises as follows:

Differences of opinion as to the conditions under which the prohibition will arise focus upon the following issues:
—The amount of milk required to give rise to legal consequences.
—The age of the child to whom the milk was provided.
—Whether the husband of the wet nurse is the natural father of the child or not.
—Witnesses to the suckling.
—The status of the woman providing the milk.
This is a simplification of a complex subject but again, in the context of science and national need it is understandable. The purpose of the Council fatwā is not to settle the dogma once and forever but to justify a medical procedure.

The *fatwā*:

1. The suckling of the child with milk from a woman other than its mother will give rise to a prohibition of marriage between the child and any person to whom marriage would be prohibited if the wet nurse was the child's natural mother under certain conditions.
2. The conditions referred to in paragraph 1 are:
   (a) the child is below two years of age;
   (b) the suckling takes places on five consecutive occasions and to an extent which satisfies the child's hunger;
   (c) the identity of the wet nurse is known.
3. Suckling a child by the collection of milk from several women does not fall within the definition of 'suckling' according to Islamic law.
4. The establishment of a milk bank to feed babies through the means described in paragraph 3 is permissible.
5. The feeding of babies with milk from a milk bank does not give rise to a prohibition on marriage between the child within the [group of] donor mothers or their relatives as if the donor mothers were the natural mothers of the child.

The important elision in this *fatwā* is the distinction it draws between milk from several sources where the donors are known and milk from several sources where the donors are not known. The latter is not 'suckling' as contemplated in the Qur'ān and *aḥādīth*, where the consequences relate to family law in which the donors are known and the respective lineages are identifiable. This is not the case in a milk bank. A suggestion in submission to Council that some form of certificate stating that a child has had access to bank milk was rejected or, rather, ignored. The complications for administration are obvious.

The only other *fatwā*[607] on the subject is from the NU given in 1971, which comes to no clear decision but merely repeats the Shāfiʿī position, citing the standard *fiqh* texts, in this case *Iʿānat aṭ-ṭālibīn* on putative relationships. The *fatwā* does, however, emphasise that the identity of the woman providing the milk must be known for such a relationship to arise. One may imply from this that the anonymity of milk bank donors cannot give rise to a possible relationship.

THE 'CREATION' OF LIFE

I am using 'creation' here in the sense of human intervention to override the failure of the natural method of reproduction. While this is obviously related to the theology of ensoulment (above), we concentrate here on the techniques of intervention found in various forms of artificial insemination and the creation of semen banks. Both have implications for the Syariah in the definition of lineage, with direct implications for marriage and inheritance.

The collectivity of '*ulāmā*' are aware of most forms of artificial insemination (IVF) and various permutations (i.e. with sperm donor, egg donor, with sperm and egg donor, and any combination with surrogacy). Human cloning has not yet been achieved, although in some countries in Western Europe, Japan and the United States the production of human cells by this method, for so-called 'therapeutic' purposes, is now permitted or will be shortly. The implications of this for Syariah are serious and far-reaching, as indeed they are for humanity as a whole. For Indonesian Islam the issues are in IVF and, in one instance, surrogacy. There are widely varying approaches to these issues among the '*ulāmā*', even if the eventual answers as to lawfulness are the same or similar.

Majlis Ulama Indonesia

There is one *fatwā*[608] which is short but to the point. It is in four parts. First, the creation of a child using sperm and ovum from a legitimate husband and wife is neither forbidden nor permitted—it is *mubāḥ*. The technique, in other words, is an 'option' as a matter of religious principle. Second, however, implantation into the womb of another woman is forbidden because it may give rise to complexity in inheritance between the children born to the mother who provided the ovum and the mother who carried and gave birth to the child.

Third, the use of semen from the deceased male parent is forbidden. Again, because of possible problems relating to succession and inheritance. Finally, the creation of a child from semen and ova taken from people who are not husband and wife is forbidden. It is the same as unlawful sexual relations (*zinā'*).

The interesting point about the prohibitions in the latter three parts is that the MUI justifies its decision on the basis of 'Sadd-Al Zariah', which is the classical *Sadd al-Dharā'i'* 'blocking the means'. This is the rule that, to prevent evil or illegality, a method of action that will certainly or in all probability lead to a wrongful end must be prohibited. It is to prevent an evil before it actually occurs, and amounts to already declaring certain actions unlawful even though the wrong is not achieved—it is enough that it is probable. The example usually given is *khalwat* (i.e. a wrong in itself), even if *zinā'* has not happened.

Doctrinally, *Sadd al-Dharā'i'* is founded in the Sunna of the Prophet, and in the later jurisprudence; there is considerable discussion as to the concept

of value in assessing means and ends—hence, the emphasis on greater and lesser wrongs. More important from the point of view of this *fatwā* is the assessment of probability. Generally speaking, the jurists give us four classes, which have been summarised[609] as: (i) acts that will certainly lead to evil; (ii) actions most likely to lead to evil; (iii) actions that often lead to evil but where there is no certainty; and (iv) actions that rarely lead to evil. The MUI *fatwā* does not actually specify which, but it seems, from the phrasing of the text, not to mean the first but certainly the second. In this *fatwā*, there is a balance of probabilities.

The Muhammadiyah

The approach adopted here is quite different. The Muhammadiyah does not use *Sadd al-Dharā'iʿ* in IVF problems, though it does in other issues.[610] Instead, after stating the possible permutations (the use of semen and ova from legitimate husband and wife, which is *mubāḥ*; then semen donor, egg donor and surrogacy—all forbidden),[611] the Muhammadiyah proceed directly to the Qur'ān. The passages are in order of citation:

S XVI:72 'God has made for you . . .
Mates and Companions . . .
Sons and daughters and grandchildren'
S XIII:11 '. . . never will
God change the condition
Of a people until they
Change it themselves'
S III:14 'Fair in the eyes of men . . .
Women and sons [and property]'
S XXV:54 'It is He Who has
Created man from water
Then established
Relationships of lineage
And marriage . . .'
S.II:223 'Your wives are
As a tilth into you
So approach your tilth
When and how ye will'
S XXXVI:36 'Glory to God, Who created
In pairs all things that
The earth produces, as well as
Their own [human] kind . . .'
S II:29 'It is He Who has created for you
All things that are on earth . . .'
S XXX:21 'And among His signs
Is this, that He created
For you mates from among
Yourselves, that you might
Dwell in tranquillity with them

And He has put love
And mercy between your [hearts].'

These passages are followed by *aḥādīth* from Al-Tirmiḍhī and Abū Dāwūd on the importance and primacy of having children. From these propositions, it follows that an aid to conception is permitted provided that a legitimate marriage exists. The latter condition is a *naṣṣ* (clear injunction, explicit textual ruling) from Qur'ān and *aḥādīth*.

Nahdhatul Ulama

There are two *fatāwā* from the NU. The first,[612] of 1981, allows IVF from the semen and ova of a legitimately married couple but otherwise forbids the technique. The extraction of semen and ova must be done in a proper way which does not lead to possible wrong: that is, the process must be carried out using the appropriate medical techniques. There is a short discussion, citing Ibn Ḥajar and ar-Ramlī as to the relationship between the child and the semen-ova. This is not part of the *fatwā* proper.

The second *fatwā*[613] forbids surrogacy because matters of lineage, guardianship, inheritance and upbringing of the child are impossible. A further point is that it is impossible to know who is the true mother, the donor (i.e. the initial owner) of the ova, or the woman in whose womb (the owner of the womb) they are placed.

CONCLUDING REMARKS

God is still the Creator in Indonesian Islam because, as the *fatāwā* demonstrate, medical science is not value-free. The contemporary scientific advances and capabilities are limited by the constraints of Revelation. These limitations—that is, actions which are not permitted—are not obscurantist or a blind rejection of science. Instead they are judgements of just how far human initiative in science can be permitted to interfere with or alter the 'natural' order. As we have seen, the 'natural', God-given, can be adjusted, as in contraception, autopsy and organ transplants. But the limitations in abortion, semen banks and surrogacy are clearly theologically justifiable. At a practical level they avoid the ethical confusions with which the secular West is now faced. That state of confusion and ethical relativism is quite obvious to Muslim theologians, who can and do take a justifiable pride in their own position.

These observations take us back to comments made in the Introduction—the nature of Natural Law as understood by 'Abduh and Rashīd Riḍā. The rejection of relative values is not purely defensive. Instead, it must be seen as a positive position because it limits 'practicality' to a higher purpose which, in this case, is the sanctity of life itself. Revelation is not diminished by science; this is just another way of saying that science must proceed and be judged in ethics. The internal Muslim position expressed in these *fatāwā* is perfectly consistent.

5

Offences against religion

This chapter has two purposes. First, it considers the issue of 'offences' directly. Of course, as we have seen in the preceding chapters, non-compliance with *fiqh* is already an offence, but here we are concerned with edge or controversial issues in contemporary public life. As we saw in chapter 4, modern science raises exactly the same problems. Here we take (a) money and money contracts (*ribā*), (b) food and drugs (*ḥalāl-ḥarām*), and (c) public morality (*zinā'* and *gharar*). As is obvious, the *fiqh* terms relate to classification of action in the general sense of criminal offence—that is, where a public penalty is imposed.

This leads to the second purpose of this chapter: how are the *fiqh* classifications to be defined in the circumstances of contemporary Indonesia? To answer this, one must know the method of definition being used. As we shall see in the *fatwā* immediately following, the argumentation is from within *fiqh* (i.e. by way of *qiyās, 'illa* and *ḥikma*) but with significant new emphases derived from a reinvigorated form of *maṣlaḥa* (public interest).

A *FATWĀ* ON DEFINITION

The *fatwā* chosen here is actually a long booklet on the issue of whether a medical injection (in this case against smallpox) is permissible during *Ramaḍān.* It was issued by the Council for the Evaluation of Health and Islam[614] in 1961 during an outbreak of smallpox. These facts already tell us two things: first (as we saw in chapter 4), science is setting the agenda; second, public interest/benefit is the primary context. The truth of these observations is perfectly plain from the structure of the booklet itself. It falls into three parts—the introduction to p. 10, a general discussion on smallpox and its eradication to p. 21 and the citation of *fiqh* texts to p. 73 followed by the *fatwā* itself. The really complex part is in the first third, and it is this which actually determines the result.

The introduction sets out the then appropriate government regulation[615] on quarantinable diseases, including smallpox. This is followed by a discussion on the methods of eradicating the disease. There are lengthy passages on the techniques of vaccination,[616] the preparation of vaccines, and steps to be taken to prevent the spread of the disease. This is straightforward medical science of the period.

The *fiqh* input (about 40 pages) is more complex and is in two sections. First, a description of those acts which void the fast: these are eating or drinking, deliberately placing some visible substance into the body including via the anus, deliberate sexual intercourse with or without ejaculation, masturbation, expulsion of afterbirth and apostasy. This is a somewhat eclectic list but the authorities cited are the standard ones, though including, rarely enough, Shāfiʿī's *Kitāb al-Umm* (also including Ibn Ḥajar's *Tuḥfat al-muḥtāj* as well as the *Bughyat al-mustarshidīn*). Second, the same and similar *fiqh* texts are cited to show that the maintenance of cleanliness and thus health is a duty of all Muslims: it is a matter of personal and public necessity. Subjects discussed in this material include vomiting, spitting in public, food mixed with saliva, flies and mosquitos. In other words, a major part of the *fiqh* material cited is being read as a confirmation of medical science on the prevention of communicable diseases.

The *fatwā* then conflates the two sorts of material and concludes: (a) the piercing of the skin (for vaccination) is not an act prohibited during the fast. There is evidence from the *fiqh* texts; (b) prevention of disease is a duty of all Muslims. Therefore, vaccination is permissible during *Ramaḍān* because such an action, unknown at the time of the Prophet, cannot be related by way of *qiyās* to actions accepted as breaking the fast. However, this is not the end of the matter. The *fatwā* also cites a passage from Maḥmūd Shaltūt's *Al-Fatāwā*, consisting of ten lines, which is concerned solely with the preservation of *takwā* (pious acceptance of, and obedience to, God) during *Ramaḍān*. In this period, the individual is the 'guest of God' and the whole individual effort must be to behave in the manner appropriate to a guest in the presence of his or her host. The individual, both inwardly and outwardly, must understand and keep the fast in just the same way that he or she would act properly as a guest. The whole metaphor implies acceptance of obligation and gratitude to God. In other words, there is always a higher duty, and necessity (*maṣlāḥa*) as such must always be judged against that duty. This seems to be the significance of the Shaltūt citation. We know that the fast may be broken under certain conditions (e.g. travel, hardship) and we know that the conditions are often impossible to specify exactly. But the possibility of breaking the fast is the important point here; the fast is not an end in itself: its *ḥikma* (rationale) is closeness to God, in the sense of being a guest of God. Similarly, a prophylactic injection is not intended to break the fast or to lessen or qualify the true rationale of the fast: its function is quite other—public and individual benefit. We thus arrive at a justification through *maṣlāḥa* in addition to the strictly

legalistic reasoning indicated just a little earlier. The fast is redefined as more than just a physical observance.

We can contrast this *fatwā* with a later and related *fatwā* from the same Council given in 1973.[617] This again is a booklet, the subject of which is fly eradication for the purpose of preventing the carrying of disease. However, in the 1950s this apparently rational program ran into opposition from '*ulāmā*' in East Java and in North Sumatra. The basis for the opposition was a reputed *ḥādīth* from the Prophet that while disease may be carried on one wing of a fly, the other wing carried the cure. This was interpreted by the '*ulāmā*' as both 'natural' and, with Prophetic authority, it thus followed that an eradication program was unjustified. To a Western reader this may seem an obscurantist view, but from the internal *fiqh* view the real issue is otherwise. Put shortly, it is that science is pre-empting Revelation. This was the problem for the Ministry of Health Council.

The Council began by citing[618] from the Qu'rān:

> S II:195 '. . . And do not with your own hands cast yourself into destruction.'
> S IV:102 'Do not destroy yourselves for God is merciful to you.'
> S IX:102 'You must always be on your guard.'

The Council continued by considering and judging a selection of *aḥādīth* on the purity of food (*ta'ām*),[619] a complex and much-disputed area in *fiqh*. It focused, however, on the fly issue, ignoring the full range of *ta'ām* jurisprudence. The *aḥādīth*, as reported in the Council's *fatwā*, are conflicting. The Council cites, for example, Abū Hurayra's view that S II:195 forbids a person from endangering himself by eating forbidden food, while Abū Dāwūd construes it more generally as forbidding any action that places the person in danger. The Council is here indicating its view that the *ḥadīth* can be either particular or general in its meaning. As to the actual immersion of the fly, the Council cites a variety of interpretations (Muslim, Bukhārī, Abū Dāwūd, Ibn Mādjā) and distinguishes those who say that it must be fully submerged from those who say that it should be submerged and then discarded. The conclusion the Council draws from these interpretations is that the fly should not be eaten to nullify the danger which it poses. It specifically finds this the same as the rule forbidding the consumption of flesh that does not derive from an animal with 'flowing blood' (i.e. carrion). The fly, therefore, is forbidden, because it is classified as such (*maita*, *mayta*).[620]

The Council's argument is interesting because it moves by way of various interpretations of *ḥadīth* to equating the fly with forbidden food, from which it follows that its removal from the actual food in which it is immersed renders that food consumable. A direct analogy is drawn from a related set of *aḥādīth* (Abū Hurayra), which relate the Prophet's answer to the purity of food into which mice have introduced themselves. Thus, where there is a dead mouse in liquid butter the whole must be thrown away, but where the butter is solid then only that immediately surrounding the mouse

need be discarded. From this the Council concludes that the food onto which a fly has fallen should be discarded because '. . . by analogy the danger posed by the mouse and the fly are the same'. The actual *fatwā* reads as follows:

- The fly *hadīth* are related in a number of conflicting pronunciations while they have a single common purpose of directing that a fly should be immersed in the food or drink upon which it lands.
- The chain of narration/authentication of the *hadīth* is indirect.
- In none of the *hadīth* is there a directive or a prohibition on eating or drinking food or drink in which the fly has been drowned.
- The level of scientific knowledge upon which the *hadīth* were based and the context within which the *hadīth* were pronounced by the Prophet remains uncertain.
- The *hadīth* do not concern spiritual purification or prayer because the issue of consuming food and drink into which a fly has fallen is not a spiritual but a worldly matter. We have merely been given an opportunity by Islam to act in a beneficial manner.
- Medical scientists around the world agree that flies carry a variety of diseases including cholera, typhus, dysentery so that consuming food or drink into which a fly has fallen may endanger one's health.
- According to the teachings of Islam people must avoid acting in a way which may invite danger to them. They must therefore guard their health, the highest blessing from God after the gift of the Imams and Islam.
- On the basis of the reasoning above, after a fly which has landed in food or drink has been immersed or drowned, the best course is to refrain from consuming the food or drink, particularly at times when diseases such as cholera, typhus and dysentery are rife.

These two *fatāwā*, or rather the one complex of reasoning, leads us to the following conclusions on definitions of 'offence'. First, *aḥādīth* can be distinguished in terms of acceptance or validity. There is nothing new in this: we have seen, for example, that it is particularly characteristic of Persis. In the present instance, however, the Council was prepared to determine directly whether the subject was *ʿibādāt* or non-*ʿibādāt* and in the case of the latter to be much more cavalier in what a *ḥadīth* means. This is the fundamental '*ulāmā*' objection in these examples of vaccination and purity of food. The whole status of *aḥādīth* is in question.

Second, and equally important, the 'rational' approach to definition (a) results in the conflation of *ʿilla* with *ḥikma* and (b) this conflation is in the context of *maṣlaḥa.* Taken together, these are fundamental changes in legal reasoning.

MONEY AND MONEY CONTRACTS

The comments made above are nowhere better illustrated than in the issues that money raises. As we have already seen, *mubāḥ* is not only contestable

but highly charged, and this is especially true for this subject. In this section we take banking and insurance. The former raises *ribā* (interest), which is forbidden in the classical texts, and the latter, *gharar* (gambling/chance), which is also forbidden. The problem is that the modern—that is, Western—monetary systems, which include both as fundamental bases, directly affect Muslim states. These states cannot afford to cut themselves off from international finance, whether this is in direct (capital) investment or through the IMF and the World Bank.

At the micro-level money contracts are a major concern for the rural and urban poor, who constitute the vast majority. These contracts are part of the domestic economies of Indonesia and cannot be sidelined. It may be difficult for the international financier to take these contracts seriously but at the micro-level the Islamic imperatives can be crucial for peasant indebtedness, to say nothing of aid and development programs. We begin, therefore, with *fatāwā* on general money contracts.

General money contracts, 1920s–1990s

I have chosen *fatāwā* from NU and Muhammadiyah because, between them, they cover the whole range of micro-level money transactions, including, sale, sale with a right or promise to repurchase, security, rent, hire, pawn, mail order purchase, buying sight unseen, and coin and money in the form of notes and cheques. These *fatāwā* give us a unique picture of money transactions at the peasant level and the relationship of this to state policy and practice.

The earliest *fatwā* I have been able to trace on these issues dates from 1926,[621] from the NU, and it is one that goes to the very heart of peasant practice in all parts of Muslim Southeast Asia. It involves the transfer of land from A to B as security for an advance of money. The debt is repaid by taking the produce or a part of the produce over one or more seasons in the agricultural cycle. It is a common practice and is recognised in the customary laws (*adat*) of Java and elsewhere. However, it raises difficulties in *fiqh*. The Congress gave three options as to its validity. First, it is acceptable on the basis of *adat* provided that no written contract (i.e. in *fiqh*) is in existence. Second, and related, the practice is forbidden because in *fiqh* it is a rent with undefined quantities: that is, no-one can predict the amount or worth of produce in the future and it must, therefore, be void for uncertainty. Third, while the arrangement is good in custom (*adat*), it still remains uncertain. The safest answer is to declare it forbidden (the source cited is the standard *Iʿānat aṭ-ṭālibīn*). However, two years later the Congress permitted the arrangement,[622] so that produce once taken could not be demanded back. This is clearly a concession to the demands of agricultural life at the time. It also illustrates the limitations of *fiqh* contracts in dealing agricultural property. *Fiqh* contracts are essentially for movables, so that the complexity of credit arrangements for immovable

property and the produce from it are not really contemplated in the *fiqh* contract.

The next *fatwā*,[623] also from the NU, gives us a further perspective. Here the *fatwā* is concerned with another very common peasant practice. This is the sale of land with an option to repurchase. It is in fact a loan, with land as security, and the repurchase price is always higher than the original selling price. In effect, it is a disguised interest. The transaction (*jual janji*) has caused considerable difficulty in the Mahkamah Agung.[624] In this *fatwā* the transaction is called '*sende*'[625] and is allowed. The *fatwā* is short and, while it is clear that the transaction is perfectly well understood, the major point of disguised interest is avoided. The way in which this was done was to deny a *fiqh* contract at all, so that denial becomes the answer, *fiqh* does not apply, and the contract is valid.

We turn now to contracts in general, and the act of buying in particular. While this is universal, elements of offer and payment vary widely. For example, can one buy goods unseen and then demand repayment if the goods are not what one thought they were? The answer (qualified) in all legal systems is no, one cannot. A buyer's misapprehension or carelessness is not a ground for cancellation or compensation. The *fiqh* is no exception to this general rule. The example here is a *fatwā*[626] of 1927: may one legitimately buy a tin of milk given that one cannot actually see (touch, taste) that which one is buying? The 'legalistic' answer is that an enforceable contract cannot exist because of uncertainty. But this rule was early circumvented in the classical *fiqh*, and all the four Sunni schools allowed one to buy sight unseen with a reasonable degree of certainty. The *fatwā* in this case came to the same answer. It is difficult not to conclude that the whole question is a plant, put in by someone with a point to prove to himself or others.

Perhaps a better and more relevant example is a 1928 *fatwā* on purchasing goods by mail order.[627] This is definitely sight unseen: all one has is a catalogue description, possibly with illustrations. Here it was decided that the buyer has the option of refusing to accept the goods even if they are what he had actually ordered.

A last example is purchase by an illustration or plan of a house as yet unbuilt. The *fatwā*[628] found the contract void because the object was not yet in existence. However, if the illustration or plan can be taken as an estimate of cost, which is certain, then it is permitted. No sources are cited, but the reference in this and the earlier cases is to the *Mughnī'l-muḥtāj* on the requirements of certainty.

In these *fatāwā,* all from the 1920s, the issue is certainty as defined in the *fiqh* texts. Certainty is an essential feature of any contract, but for the '*ulāmā*' in Indonesia (here Java) it comes down to (a) traditional agricultural practice, (b) the new cash economy and (c) the *fiqh* texts. There is no congruence, and a rightly understood relation between the three was not demonstrable in *fiqh* as understood at the time (see below). In 1927, five out of the nine *fatāwā*

given were on contract; in 1929, the figure is 14 out of 24; and in 1932, it is four out of nine. Where the issue is clearly answerable in *fiqh* then the texts are followed exactly. For example, selling the same goods for two prices, one for cash and the higher on credit, is permitted provided there are two separate contracts.[629] However, selling a debt which has not been recovered at the time of sale is forbidden on the ground of uncertainty.[630] Purchase by way of agency, where the agent's fee is found in different prices for the same goods, is permissible, because the fee is certain.[631]

In 1934, three out of 12 NU *fatāwā* given were on hiring property for use. The main feature in *fiqh* is that the conditions be certain or able to be established with certainty. This principle is followed through exactly in these *fatāwā*. The first two[632] are both on the hiring of a fish pond with the intention of harvesting the fish. By the nature of the exercise, sometimes fish are caught and sometimes none are caught. The contract is void for uncertainty. This is a pure *fiqh* ruling. The third *fatwā* concerned fish ponds belonging to the government; it was an exercise in providing the *rakyat* with another source of income. In terms of rational economics this was an excellent idea, but from the *fiqh* viewpoint it was void for uncertainty. The same point was made again, this time concerning the hire of a boat for a percentage of the profits made on the hire.[633] It failed for uncertainty.

The 'morality' of the source of monies was and remains a continuing problem. While this is dealt with below (in the section on lotteries), some initial examples from the 1930s are instructive. The basic question is: can money acquired from a tainted source be used for religious purposes, for example for *wakaf* (*wakf*)? The answer, from the NU at least, is yes. Thus, money derived from a contract of pawn,[634] which is valid but reprehensible, was allowed to be used to purchase land for *wakaf*. The same position was taken by Muhammadiyah[635] in the late 1970s, permitting the contract of pawn as a legitimate contract. Persis, in the late 1930s, has a rather more complex position:[636]

> Q—Where I live there is a cinema. Can we use one night's takings as a donation to build a mosque? Will the people who come to watch receive reward if their intention is to give alms for Allah?
> A—There is no authority to say that the cinema is haram and therefore there is no barrier to us using the takings as a donation towards a mosque.
>
> As for the people who come to watch, in our opinion they receive no reward because their purpose in giving money, it would seem, is not because of Allah but to watch the film. The Prophet was once asked by a man what the law would be if he went to war both for Allah and so that others would praise his courage. At that point the word of God came down which said that there would be no reward for conduct undertaken for multiple purposes because it is not clear that it is done for Allah.
>
> If people want to give alms and they really want to do it for Allah then they should give money without watching so that it is apparent what their motivation is.

There is a further comment from a preceding *jawab*:[637]

> The cinema is not a thing we can forbid outright and at the same time we can't consider it a good thing. The law on any particular movie will depend on its content and the strength of those watching.
>
> On that basis the money which we receive from the cinema can not be said to be haram unconditionally. At the most we can say the money is doubtful/suspicious. In this day and age if we wait for money that is 100 per cent clean no mosques would be built.

Transactions involving credit always caused problems because of the element of uncertainty of value at the time of repayment. For example, a common practice was and still is the purchase of rice seedlings with a promise to pay for them at the later harvest. This is invalid because the contract is not completed. If it is taken as a loan then it also fails because of uncertainty as to repayment. The value of the repayment will always be different from the original value.[638] Similarly, renting a rubber tree in order to take its sap is void for uncertainty. The tree is not sold and the sap cannot be leased.[639] Again, selling rice still on the stem either on a pay-later or credit basis is not permissible.[640] The sale of goods with two prices, one for cash and the other for credit, is permissible provided the two transactions are kept separate—that is, each with a separate contract.[641] This is a standard *fiqh* rule.

The nature (gold, silver, paper, cheques) of the actual money used in money contracts has been a consistent issue in the NU *fatwā*. In 1928, for example,[642] the exchange of gold for silver or paper was considered. The issue here was whether gold coins could be bought for silver by instalment. This was void because it is a disguised interest. But if there was a contract payable in paper money then it was valid. The same principle was followed in 1929, where the exchange of two and a half rupiah silver coins for ten 25-cent coins was classed as a mixed transaction and so void. This *fatwā*[643] relies on the *fiqh* of Shāfiʿī, Mālīk and Ḥanbalī, but it does mention Ḥanafī where it is permitted. Generally, mixing is not permitted and this includes the quality of the coins, so that a proportion of alloy (not specified) is forbidden.[644]

Transactions involving different forms of money in complex organisations such as companies and partnerships raise their own particular problems. Thus, it is not permissible[645] to form a company where individual shares are differentiated according to the money type (i.e. gold, silver) of each contribution. The source is Sharqāwī, but the contrary Malīkī opinion is also mentioned. This does not mean to say that there is no equivalence known for the different forms, at least for some purposes. For example, for payment of *zakāt*, all money and money equivalents (e.g. cheques, company shares, in fact any document of calculable money value) are permitted.[646] In 1986 the NU considered this issue in detail and

produced three *fatāwā*,[647] which decided that (a) the use of cheques in trade is permitted, (b) payment by blank cheque is forbidden because it constitutes an unknown price, and (c) the status of post-dated cheques. As to the latter, if it forms part of a contract for purchase of goods it is legitimate because the time for payment is fixed. If, however, the contract is one of loan, then it is not permissible as allowing for interest over time.

Another and rather more difficult form of complex financial organisation is the cooperative. In 1987 the NU laid down the general principles as follows:[648]

- A savings/lending cooperative cannot satisfy the stipulations of a corporation as defined in the law books because there must be a document giving permission to trade whereas in the cooperative, the capital is only for lending. Also the capital of a company must be collected prior to formation whereas capital can be added to the cooperative at any time with the agreement of members. So the contract governing the collection of capital is not legitimate according to Shariah stipulations. [Sources cited: Ansārī's *Fatḥ al-wahhāb* and Nawawī's *Minhāj aṭ-ṭālibīn*]
- Administrative charges levied by a cooperative are simply interest by another name because the charges are compulsory and provide a benefit to the cooperative at the expense of the borrowers. Also the charges are calculated as a percentage of the amount borrowed. So it is usurious interest as forbidden in the *hadīth* of the Prophet.
- As the cooperative cannot be a corporation, the issue of *zakāt* falls back on the individual members. The way for Indonesians to correctly pursue this kind of activity is for the Savings/Lending Cooperative to become an ordinary cooperative and no administrative charges to be levied against the loans as a percentage.

A more complex example is in the discussion surrounding the *Tebu Rakyat Intensifikasi*,[649] a cane-sugar growers' cooperative under the umbrella of which a group of farmers grow sugar cane for sale to the government. The group, village-based, has a chairman, who arranges for a licence to plant and claims planting and living costs on behalf of the group. The produce is milled at the sugar factory, which takes 38 per cent as payment; the remainder belongs to the growers, who must repay the costs incurred. Out of the remainder, 98 per cent must be sold to the state at a set price. The NU decided that this arrangement was void. It was not a recognisable contract of trade, nor was it share cropping or an agency. This decision was reached on authority of Ansārī's *Fatḥ al-wahhāb*. From that portion of the latter referred to, it is clear that the rejection of the cooperative arrangement was because it could not be classified in *fiqh* terms. The decision caused much controversy and, four years later in 1994, it was reversed[650] on the grounds that it was necessary for the members of the program. The justification for the reversal is interesting. Instead of looking at the arrangement as a whole, the NU committee broke it up into its component parts. The committee

found 'perfected' contracts: that of borrower and lender between the farmer and the bank; a contract of lease between the farmer and the factory; a contract for sale of produce to the relevant state agency. The standard *fiqh* texts cited repeat the essential features of each particular form of contract. However, the committee showed considerable hesitation even then. The problem is that the financial results in each form remains uncertain because the profit depends on the quality of the sugar (its sucrose content), and by its nature this is never certain. In short, risk cannot be eliminated, and the issue is thus the degree of acceptability of commercial risk. There are substantial differences within the Sunni *madhhab*, and in this instance the committee reluctantly allowed Ḥanbalī and Ḥanafī views as to risk.[651]

The second element of difficulty, as the citation above makes clear, is the problem of interest or disguised interest ('administrative fees'). This is forbidden without discussion of the nature of cooperatives. Here, one may question whether NU might have come to a different conclusion if it had been prepared to distinguish between the respective natures of cooperatives and banks. Both are supposed to make profits, but in the case of the former these are returned directly to the members. There are two *jawab* from the Muhammadiyah which are instructive. In the first,[652] cooperative is defined as an institution to improve the welfare of its members, and for this reason the income from interest is not *ribā.* Interest payments are not forced payments but are entered into willingly on the basis of mutual help, and the cooperative, as a form or structure of the contract, is *mubāḥ*. The same point is made in the second *jawab*[653] from the late 1980s. There are two interesting passages. First, interest payments are not *ribā* because, on analogy with payments for the *haj*, one can differentiate them. The reasoning is that just as an early payment for the *haj* can result in a lesser price than a later payment, so cooperative payments can be distinguished from bank interest payments which have another function—that is, profit as opposed to mutual benefit. Second, the authority for this view can be found in S II:279. This *ayat* is part of a set (S II:275–281) forbidding usury, and the passage cited from 279 reads '. . . deal not unjustly and ye shall not be dealt with unjustly . . .' (also in 281).

As we can see, the respective approaches of NU and Muhammadiyah are quite different. Essentially, the former is reluctant to approve money arrangements that cannot be defined in *fiqh*. The Muhammadiyah, on the other hand, is prepared to distinguish financial arrangements on the basis of purpose and motive. However, as we now go on to see, the distinction is by no means consistent or clearcut in all circumstances.

Banks and interest-based banking

The past three decades has seen an explosion of studies on interest-free banking as part of the development of 'Islamic' economics. There is now a vast literature on the subject,[654] and a considerable number of Muslim-populated states have introduced 'Islamic' banks. The main characteristic of

these institutions is interest-free banking and a range of contracts (*baiʿ*) which operate on the profit and loss sharing principle. It is moot the extent to which the written contracts are in fact derived from syariah. Typically, the contents are pure European law: for example, in Malaysia, contracts of equity, trade, debt and lease financing are in English law terms and are in fact litigated in the secular courts. The precedents cited are from the UK, Australia and Singapore. The Syariah is, at best, at the margins of these contracts,[655] and it certainly does not determine the outcome of disputes. The religious courts do not have jurisdiction.

Indonesia introduced in 1991 an Islamic bank, the *Bank Muamalat Indonesia*, but data are lacking. Having said this, and bearing in mind the comments just made, the Islamic element must not be dismissed as mere exhortation or window dressing. One can see why a Western observer would take this view, especially (as almost always happens) as the 'profit' from profit and loss investment always matches the current rate(s) of 'interest'. The purpose is more than just to state an 'Islamic' position: it is to offer the possibility of a positive and viable alternative in law. Whether the possibility is ever going to be more than a possibility is doubtful, but at least the argument is positive. The defensiveness of the reform movement in the 1900s and the 1930s is now gone. The main focus of attention has been 'unjustified increase' (*ribā*, also in Indonesian *bunga*), the shorthand term for which is 'interest'. It is forbidden (S II:275–281), but at the same time a complex set of legal fictions has been developed to avoid the prohibition.[656] These will be referred to where appropriate in this section and the one on insurance.

We begin again with the NU *fatāwā*, which take us from the 1920s through to the 90s, thus providing an invaluable historical context. In 1937 the holding of depositors' money in a bank was treated with considerable caution.[657] The act of deposit for the purpose of safekeeping is permissible. However, if these funds are to be used in interest-generating investment then it is *makrūh* and must be avoided. We can notice here that it is not forbidden, and the reason for this is a reference to an earlier *fatwā*,[658] from 1927. The issue here was whether, having taken a piece of land as security for a loan of money, the lender could take the produce as well. As a matter of *adat* (custom) this was normal practice, although there were and are various methods for calculating value(s). Whatever these might be, the issue is clearly the possibility of interest as represented by the produce. The NU Committee took this point immediately and although the agricultural aspect is not part of *fiqh* declared the transaction too close to *ribā* and, on the grounds of safety, forbade it. The source cited is the *Iʿānat aṭ-ṭālibīn.* This reasoning was exactly reproduced in the 1937 *fatwā* and again in a *fatwā* of 1971[659] on bank deposits and interest. It is forbidden on exactly the same sources and reasoning. This is a longstanding NU position (but see below), but uncertainty always remained where *adat* was involved. This is the old issue of trying to balance peasant practice and the *fiqh* texts. For example, in 1939 we have a *fatwā*[660] which is on interest as part of an *adat*

contract involving a cooperative. The then committee came to no clear decision, indicating instead that opinion was divided. The *fiqh* texts cited are the same as given above, plus the *Bughyat al-mustarshidīn.*

As we saw earlier, the NU tended not to distinguish between cooperatives and banks so far as interest was concerned. For example, it classed the compulsory administrative charges imposed by cooperatives as 'interest' because the charges were calculated as a percentage of the amount borrowed.[661] This is a perfectly accurate conclusion; it is worth pointing out also that in the Islamic banking system 'administrative' charges are directly correlated with the current interest rates. However, in 1957[662] the NU was prepared to consider company financing on an interest basis provided that necessity (*ḍarūrāt*) could be shown. However, the definition of necessity was restricted to the possibility of death or destruction, and the committee here cited a 1938 *fatwā* to support this definition.[663] Interest-based banking does not fall within this definition.

This remained the NU position until 1992 when, in an elaborate discussion,[664] the following principles were established:

The Issue of Islamic Banking

- On the issue of conventional interest in banking there are differing opinions; it is exactly the same as usurious interest and so forbidden; but it is not the same and so permitted; it is dubious and so not certainly forbidden.
- The first opinion contains variations of opinion: interest of all kinds is forbidden; interest is forbidden but may be collected in a non-Islamic banking system; interest is forbidden but may be collected because of a strong need.
- The second opinion also has variations: interest [just for gain] is forbidden but productive interest is permitted; interest obtained from a clearing account savings bank is permitted; bank interest is not forbidden if the interest rate is set publicly beforehand.
- Given that NU members represent the greatest potential for national development and socio-economic life, it is necessary to have financial institutions for lending and borrowing which are in accord with the beliefs of the members, so it is necessary to find a way to set up a banking system with accordance with Islam by the following steps:
  - — The current system must be changed soon.
  - — Collection of society's funds according to the conditions for receiving current accounts and saving accounts and lending from a different institution which follows the same system.
  - — Silent partnerships in the form of: general and special investment accounts (for terms of 3 months, 6 months etc).
  - — Investment of funds in business activities: financing of projects, financing trading consortiums, providing services on the basis of a joint venture, or share of profits.
  - — For the purpose of project [equity] financing, the following may be used: silent partnership loan, company partnership, resale with

specification of gain, granting of credit with a service charge, an agreement for increase of the value on credit.
— For participation, the bank can open a Letter of Credit and give out a written contract. For this purpose, activities can be undertaken on the basis of: representation, partnership, resale with specification of gain, leasing, sale and purchase, a bargain of forward buying, buying on credit, bank guarantee, financing of working capital via a purchase order with specification of gain on resale.
— For other banking services such as sending and transfer of money, currency exchange etc, these must be done on the no interest principle.

This is essentially a plea for an Islamic banking system to be established. The forms of financial transactions mentioned are the standard forms used in the contemporary Islamic system.[665] This is a 'safe' position, which clearly distinguishes *ʿilla* and *ḥikmā*.

We can usefully contrast it with the Muhammadiyah view, where *ḥikmā* is emphasised—indeed takes the dominant position. The Muhammadiyah consistently discuss interest in the two contexts of commercial banking and 'interest/administration' charges in cooperatives. Its contexts are thus wider than the simple context characteristic of NU. In short, for Muhammadiyah 'interest' is already divisible into two sorts—in this instance usually referred to as '*kontekstual dan tekstual*'.[666] To understand what this means we have to go back to 1967, to the *Himpunan Putusan Majlis Tarjih* of that year, where 'Bank Muhammadiyah' and 'Masalah Bank' are the two important entries (at pages 297 and 304 respectively); we had best take them together. The discussion is highly structured and begins with a general discussion on the nature of banks and banking. The points made are: that banks have a vital role in contemporary economic transactions; that contemporary banks are not based on Islam; that interest is an essential part of bank procedures; that the individual Muslim, and Muslim society in general, cannot escape from the contemporary banking system which dictates the economic structure of nations, including Muslim nations. Bearing in mind that these propositions were put forward in 1967 when the 'Islamic' bank had not yet begun to make an impact, even as an idea, they do accurately sum up the Muslim dilemma. This is explained in the following section, as consisting of: the undoubted fact that *ribā* is forbidden in Qur'ān and sunna; that the interest charged by banks has an administrative function and this may be in fact of benefit to the 'state' (*negara*—the implication here is a national economic benefit); that the laws (*undang-undang* but unspecified as to which ones) of the state determine interest rates in order to prevent a monopoly being introduced; and that there is no economic system based on Islam.

The implications of these two sections are then summed up as follows: the purpose (*ʿilla*) is to protect the weak from exploitation by the strong; the bank system was not known at the time of the Prophet; the state bank is for the benefit of the *umma*; therefore, 'interest' as such may or may not be

ribā. The conclusion, therefore, is that interest is 'ambiguous' (*musytabhat*). From this it follows that a state bank (Bank Negara) has a function different from that of a commercial (private) bank and thus its charges may be justifiable, although justifiability is always circumstantial. The safest course is to avoid ambiguity. This is the theme taken up Dr Fathurrahman Djamil[667] who, in relying on this 1967 discussion in the late 1990s, distinguishes between *ribā faḍl* and *ribā nasī'at*. The important difference between the two is the *rate* of the charge on capital: the former is truly usury (as excess) and forbidden, while the latter (as credit) may be possible—particularly in the context of cooperatives.

There are recent Muhammadiyah *jawab* which can be read to support this position. As we saw earlier, the context is the bank and the cooperative, but in the Muhammadiyah *jawab* the issue is also taken with pawn (*gadai*) and bribes (*suap*). The context, therefore, is uncertain or ambiguous money transactions, and it is important to keep this in mind. There is no other way of explaining the Muhammadiyah *jawab*. Thus, we read that an excess payment made by a cooperative on a deposit is permissible, provided it is small (here 10 per cent) and does not exceed the rate of inflation. Service fees are likewise permissible, citing Middle East (Oman) authority.[668] However, excessive rates are not, but if the rate of inflation is high then it is permissible to impose a high rate of interest, provided it is below the inflation rate. Variability of rates is acceptable, the point being that the value of money must be maintained; the benchmark is the national bank note.[669]

These arguments are elaborated further,[670] where a distinction is drawn between *ziyadah* (increase), which at a rate of 24–48 per cent is forbidden as *ribā*, and *upah* (remuneration for service) at +/- 4 per cent, which is permissible. A higher rate can also be justified so as to keep pace with inflation (up to 13 per cent is suggested). Finally, two new elements are introduced into the discussion. The first is that the financial complexity of modern society must be dealt with on the basis of *ijtihād*. This is the standard Muhammadiyah position. Second, as an extension of this, the complex *ribā, ziyadah, upah* can best be managed in the form of *mudarabah* (profit and loss sharing) contracts. These constructs are fundamental in the 'Islamic' economics, but the Muhammadiyah comment does not explain how they are to work. However, when compared with the NU position, we can see that these last suggestions by Muhammadiyah do show a potential for future financial management within *fiqh*. Whether 'within' will mean actual rules of *fiqh* or merely the adoption of *fiqh* classes with non-*fiqh* content is debatable. Experience from elsewhere (e.g. Malaysia) suggests the latter.

Insurance

Contracts of insurance (*asuransi*) raise the issue of gambling (*gharar, maisir*), which is forbidden (S II:219, V:93). From a strictly logical point of

view, insurance contracts are risk contracts, the aim of which is to cover loss in the event of a future incident. Because an event is in the future, its time of occurrence and the circumstances surrounding it cannot be known with certainty at the time the contract is concluded. But this is to state the obvious; contracts of insurance are in fact very much more complex in the contemporary nation-state. Gambling, as such, is not the only issue.

All insurance is based on calculable rates of risk; all risks, to be accepted, must be assessable in money. In current commercial practice there are three major forms of interest to us here. (I am excluding the very special contracts (e.g. carriage of goods by sea) which have no possible relevance to the mass of the Muslim populations of Southeast Asia.)

The first is the payment of a premium which is certain, for a return sum which is certain in the event of a circumstance that is also specified as certain (e.g. fire, accident). The insurer must indemnify to the value of the loss suffered. The whole contract is certain, and there is no objection in *fiqh*.

The second form, at the other extreme, is the contract for life insurance. There are two uncertainties here: the time of death, and the total amount of premium paid. The objection in *fiqh* is that this is *gharar* and the objection is valid. The insurer is gambling that its actuarial tables will, on average, be to its benefit. The person insured is gambling that he will beat the odds in the actuarial tables. It is most unlikely he can, because the tables are actually loaded in favour of the insurer. It is a straight out gamble.

The third form is the endowment policy, which guarantees a fixed sum payable at a specified age or on death. It is a form of saving: payment of premiums is a certain sum plus a profit, although the latter can never be known, except in average terms, at the time the contract is entered into. The contemporary Islamic economic version of this is *takaful*, where the contributor is a sharer in profits.[671]

In addition, there are various forms of social insurance (sickness, pensions) run by state agencies, often managed by professional insurers as *part of the commercial insurance funds industry*. The insurance industry, therefore, is much more complex in its contracts than bare references to *gharar* and *maisir* would suggest. This is not to say that unrestricted gambling has been rendered harmless (see below on lotteries). For example, trading in stocks on the share exchange is clearly a gamble, despite the financial complexity and the nature of the contracts involved, and the NU has, quite rightly, classed this as *gharar*.[672] The problem is that considerable amounts of saving funds from state pensions are invested in stock exchange transactions. The point is that *fiqh* classes cannot deal adequately with contemporary finance, and the contract of insurance is a perfect example.

The NU has put out two *fatāwā* (1939 and 1960) and a statement (1992) on insurance. The *fatāwā* are really one, in that the second[673] repeats the first.[674] Life insurance is forbidden as gambling (*judi*). The reasoning is complex and relies directly on Egyptian material. This is the insurance *fatwā*

of Sh. Muhammad Bakhīt al-Mutīʿī (1854–1935, Mufti of Egypt 1915–20) published in 1906.[675] The date is significant: ʿAbduh had already published three *fatāwā* permitting insurance. Sh. Bakhīt's *fatwa* may be read as a counter to the 'modernist' acceptance of Western ways of reasoning about money and the place of *fiqh* as the ultimate authority on finance and individual financial obligation. For him the *fiqh* must determine the issue, because if it does not, then Islam itself will have lost authority in a fundamental aspect of life. The issue, thus put, was not just about insurance but about the acceptance or rejection of non-Islamic criteria for defining obligation. Sh. Bakhīt chose the latter option, and his arguments are reproduced in full in the 1960 NU *fatwā*. Essentially, they reduce to two. First, a contract of life insurance has no class in *fiqh*. It is not a deposit, nor a surety (which requires a debtor, creditor and the surety), nor is it payment for damages, or compensation for breach of contract. It is not *mudarabah* (profit and loss sharing). Sh. Bakhīt is on good technical grounds from within *fiqh* texts. Second, insurance contracts are void as gambling. The whole *fatwā* is internally consistent and was adopted without amendment by the NU.

This remained the NU position until 1992 when, in the 28th National Congress, the whole question was reconsidered in detail. The Congress began by defining insurance with reference to the criminal law of Indonesia (the KUHP), itself a paraphrase of the Dutch colonial law.[676] The paraphrase reads:

> Insurance is a kind of contract in which the insurer connects themselves to the insured, receiving a certain premium, to indemnify them for a misfortune or loss of money which may occur.

This is not the whole of the article (246), but it sets a definition from which the NU Congress proceeds. There is no explanation for this particular passage being chosen by the Congress; something from the *Burgerlijk Wetboek* could have been more suitable, although this is speculation. In the event, the Congress went on to set out its position on insurance and types of insurance:

> Kinds of insurance: Financial insurance for loss of items due to disaster and loss or lowering of the value of items or loss of expected profit (the compensation does not have to be paid if no loss is incurred); Life insurance paid according to a contract on the basis of a person dying; Social insurance taken out by government insuring the populace which is traffic accident insurance, civil service insurance, workforce insurance, health insurance, army insurance (these can have financial and life insurance qualities).
>
> **Insurance Law**
> - Social Insurance—permitted on the following conditions: the insurance is not a contract but a cooperative society; it is carried out by the government which wears any loss and any profit is used in the interests of the populace.

- Financial Insurance—permitted on the following conditions: the insurance takes the form of rules and regulations for objects which become the bank guarantee; cannot be avoided by government regulations such as insurance of imports and exports.
- Life Insurance—forbidden except under the following conditions: includes an element of saving; when giving over the premium, the insured is of worth as a potential profit for the insurer; if the insurer appears to be in financial trouble before the time agreed by the parties in the policy, the insured may withdraw the premium, the premium can be paid by instalments when the next date falls due, the relationship between the insured and the insurer does not end, the previous deposits remain the property of the insured, if the insured dies before the appointed time, the heirs are entitled to the total amount stored and the insurer is obliged to surrender it. [This is the NU understanding of endowment insurance.]
- The participants in discussion support and agree on the existence of Islamic insurance.
- The above mentioned goals can be achieved only by changing the existing system of insurance. For this purpose, positive steps must be taken by the banking commission.

These propositions are an absolute volte face from the earlier *fatāwā*, and it is impossible to suppose that they were arrived at in ignorance of the hotly contested insurance debate in the Middle East from the 1960s onwards.[677] The Congress text does not give any reference to that debate. What is the difference between 1939/60 (the two NU *fatāwā*) and 1992, the year of the Congress? The answer or the crucial part of the answer appears to lie in the purpose for which insurance is effected. The 1992 propositions distinguish clearly between 'social' and 'commercial' motives. The latter in the form of life insurance is generally forbidden, although an exception is made provided premiums are preserved as savings (i.e. the endowment contract). The intervention of the state through a named agency (i.e. a pension fund) seems to have become the arbiter of what is 'social'. In short, it is a financial transaction justifiable in *maṣlaḥa*, though this term is not used.

But what of *ribā* and *gharar*? They appear to be absent. The answer seems to be that both had become distinguished out of relevance. Exploitation and risky gambling have become of no account now that the state has intervened. This is a tribute to and acknowledgement of the power of the bureaucratic state. The whole notion of risk has become eliminated: the *ʿilla* is no longer in *fiqh* but in the new state. This is a tremendous change in the source of authority; it is no longer in reliance on God but in the (secular) state. For Indonesian Muslims this is the Pancasila state, a reordering of the Islamic ethic in contemporary national state terms. It is only 'financial'—that is, commercial—insurance for profit which has any problems in this new, Islamic, insurance world.

The Muhammadiyah position is broadly similar. The social function of insurance justifies it in the absence of clear *naṣṣ* in Qur'ān and *aḥādīth* to

the contrary. The only detailed discussion is by Dr Fathurrahman Djamil,[678] which relies heavily on Arabic sources including al-Bahī. There is one *jawab*[679] that deals with the matter, but only tangentially. Here the question was how *uang taspen*[680]—the proceeds of a civil service pension fund—are to be distributed on death. The answer is that the usual inheritance rules apply. The propriety of such funds is not discussed and is obviously taken for granted.

It is probably safe to say that insurance is now justified, provided a public interest can be shown and a social function demonstrated. The new Islamic economic system is obviously intended to be the guardian, probably using *mudarabah* contract forms, thus a form of endowment insurance in addition to the state pension/benefits systems.

So far as interest and interest banking is concerned, we can see at least the start of a shift from *ḥarām* to *makrūh* and possibly even *mubāḥ* in certain circumstances. *Ribā* as such, is now contestable; the social function of insurance as with insurance social function—*maṣlaḥa*—is beginning to determine *ḥikmā*, so redistributing the weight of evidence.

FOOD AND DRUGS

In this section we are particularly concerned with the concept of *ḥarām* in the 15th/21st century. The rules on food and drugs provide a perfect example because the purity and naturalness of any substance can no longer be taken as a given. Genetically modified foods are the latest example, as are medicinal and other uses of alcohol. In the former, the nature of the thing has changed; in the latter, the use of a (prohibited) thing has changed. 'Nature' and 'use' are no longer as certain as they were when the rules relating to the definition of *ḥarām* were originally formulated.

Alcohol

It is of course prohibited for Muslims, though its present classification was only arrived at in stages: as morally unacceptable,[681] as a barrier to prayer while under its influence,[682] and finally an outright prohibition.[683] The same rule applies to drugs such as heroin or cocaine. There is nothing so far about the medicinal uses of these drugs. The Muhammadiyah[684] allows tobacco, but classes it as *makrūh* because of its harmful effects. No authority is given.

Perhaps not surprisingly, because of the obvious prohibition, there is little in the way of *fatāwā*; the NU, for example in the 1930s, forbids it.[685] However, there are Persis *fatāwā* from the same period that do address alternative uses. The first[686] discusses the question of whether one may use perfume which has been mixed with (i.e. fixed through) alcohol. The answer is that the consumption is forbidden quite clearly but other uses, even those which involve touching the skin, are not. There is no authority for such a proposition, and no authority for this opinion is cited in the

jawab. The second[687] is whether one may actually drink *arak*. The answer begins by defining *arak* (alcohol), repeating the Qur'ānic prohibitions, and goes on to forbid its use as medicine citing *aḥādīth* from Muslim, Tirmiḍhī and al-Nasā'ī. However, the *jawab* goes on to distinguish 'medicine' from 'necessity'; the relevant passage reads:

> Is there a difference generally in using arak as a medicine and using it in emergency? If someone is forced to drink alcohol to fend off the danger of extreme thirst, the danger of choking on something, the danger of unbearable cold, or the danger of some illness which will result in death if not treated with one or two mouthfuls of alcohol—then is this a different situation of using arak as a medicine generally. The Qur'an says that it is all right to use something haram in times of emergency. (Q Al-An-am 119) This is subject to the requirement that they only use as much as necessary. (Q Al-Baqarah 173)
>
> This explanation should be enough for all those who are not deliberately seeking a way to make medicine with alcohol halal. If a doctor said that pork butter had some therapeutic value, Muslim people would refuse to use it, even those who seek to argue that alcohol in medicine is halal. This is so even though pig and arak are equally haram. The difference is that people do not like and are not attracted to pig while they like alcohol so they use it in the name of medicine.

If nothing else, the last paragraph shows a realistic grasp of human nature! The *jawab*[688] immediately following this citation forbids trading in *arak*. To this we can add an NU *fatwā*[689] (1989) which forbids profits from the sale of alcohol being used for any pious purpose. The authority is Sharbīnī's *Mughnī 'l-muḥtāj*. On the other hand, in 1962 the NU was prepared to allow[690] the use of alcohol in medicine and in the manufacture of perfume. The *ḥikmā* here is that the essential characteristic of alcohol (intoxication) is absent in these two uses. It is also important to remember that consumption, where it occurs, is medically supervised.

Finally, there is a long discussion paper (*muzakarah*) from the MUI[691] dealing with the evils of alcohol and recommending government action to restrict its preparation and consumption. It is of no direct interest here, though it does indicate a high degree of concern at official levels in respect of alcohol consumption.

Purity of food

All food, unless specifically prohibited, is permitted for sale and consumption. The same is true for animal products (hide, skin) for personal use. However, as with alcohol, what is 'natural' and what is 'use' are contestable. In particular, modified foods and food additives and 'new' foods (see below on the latter) all cause difficulty. There are new foods which have now entered the long historical debate as to what constitutes *najis* (impurity), which has both ritual and non-ritual aspects.[692] The latter are not always distinguished in the Indonesian *fatāwā*.

We may begin with a Persis *fatwā*[693] (by Ahmad Hassan) on the definition of *najis* with reference to swine. One would expect the issue to be resolved shortly as an obvious case, but this is not so. Hassan takes the question under six headings. First, the ordinary linguistic definition of *najis*. This he finds to mean 'unclean' (*kotor*) whether by religion or not. Second, *najis* according to Syariah has three meanings: (i) uncleanliness, which requires washing (*bersihkan*) before prayer; (ii) that which is unclean to eat; (iii) uncleanliness in thought and intention. Third, the meaning of *najis* and *rijis* (filth) in the Qur'ān. He finds that *najis* occurs only once (S II:29), where it does not mean physically unclean but uncleanliness in thought. His reference is to polytheists in that *ayat*. *Rijis*, on the other hand, appears ten times with reference to alcohol, gambling, swine, evil actions and idol worship. However, his interpretation is that none of these is dirty in the sense that one must wash after physical contact. *Rijis* does not mean *najis* in the sense put just above. Fourth, when praying one must clean oneself (*wuḍū'* is meant, but he does not use this term), but this does not include *rijis* as in the third definition. Fifth, there is no authority in Qur'ān or *aḥādīth* forbidding one from bringing that which is forbidden to eat to prayer. Finally, it is not required to wash the person or clothes that have come into contact with the meat or sweat of swine. These last two propositions are totally unacceptable, and Ahmad Hassan arrives at them by the following reasoning:

> If we make contact with pigs, *najis* in the first sense, namely that which makes one unclean for prayer, on the basis that the Qur'an says it is *rijis,* then surely we must also declare polytheists, unbelievers who pretend to be Muslims and all infidels *najis* in that first sense because they are also said to be *najis* and *rijis* in the Qu'ran.
>
> In the dictionary of Al-Misabul-Munir the word *najis* is taken to mean things which prevent shalat from being valid. This opinion is not based on the Qu'ran or *hadīth*, it is based on rulings of fiqh ulama who also had no foundation for their opinion. Most fiqh ulama hold that everything which is forbidden to eat, is also *najis* to come in contact with, but they don't declare poison or intoxicating leaves *najis* to have contact with. They don't declare opium *najis* to have contact with even though we are also forbidden to eat it.

This is a very strained reading of the Qur'ān from language definitions. Swine certainly are unclean but to limit this to the consumption of pork alone and to ignore the physical presence of pig meat and its capacity for pollution, especially at times and places of prayer, is to be unrealistic in the extreme. One can also add that the attempted *qiyās*—poison/opium to pig meat—is false; the premise assumes an equivalence of physical characteristics which is just not true. Ahmad Hassan implicitly recognises this when he goes on to say that 'pork is not *najis* in the ordinary linguistic sense because non-Muslims do not view pork this way'. At best this comment is otiose; in terms of logical reasoning it is meaningless because it cannot be part of any *ʿillah*.

We can compare this with an NU *fatwā*[694] from 1960 on the use of *pincin*, a type of spiced powder used in cooking, which was rumoured to contain an extract from swine brains. Is food cooked with this preparation permissible? While the answer was yes, the reasoning is difficult to understand. This is partly because the *fatwā* is very short and partly because some sort of *qiyās* is being suggested but not demonstrated. The issue is whether such an artificial food has, in the process of its manufacture, sufficiently changed its nature or essence so as to delete the impurity of swine. The affirmative is reached by analogy with '*jukh*',[695] a type of cloth believed by the Indonesian '*ulāmā*' to be finished off by the use of animal fats in which the impurity of the latter is lost in the finishing process. The authority, *Iʿānat aṭ-ṭālibīn,* is not at all helpful. The phrase used in the *fatwā* is '*dengan gaji babi',* 'the fatty part of the pig'. We can see the essential similarity of nature ('from swine') in each case, but also the dilution of the essential character by a manufacturing process. The *ḥikmā*, therefore, is dilution. But is this always a good argument? Physical impurity in an object or food is always an impurity, however much it is diluted. In *fiqh* it is a good argument provided the essential nature (here *najis*) is extinguished, and earlier *fatāwā* on alcohol are examples of this. Again, one may object that alcohol removes itself by evaporation, but pig extract is so incorporated as to be immovable except by destruction. In short, the conditions for a true *qiyās* are uncertain and this *fatwā* must, therefore, be questionable.

If we turn now to the MUI we find a much more satisfactory approach to the problem. In 1980 the MUI[696] laid down, as a general principle, that mixed foods (*ḥalāl* and *ḥarām* materials) are *ḥarām*. Where mixing is suspected but not proven, then the foods should not be consumed until scientifically tested. A supervisory body under the Ministry of Health has been established to do this, and the 1997 edition of *Himpunan Fatwā MUI*, Part V, lists out several hundred brand names for food and drink that have received a *sertificat berlaku* (certificate of compliance). The onus of proof is on the manufacturer.

We can see how the process actually works by taking the example of the taste enhancer monosodium glutamate, which caused considerable problems in the 1950s–60s. This is part of the wider issue of purity of food, which has huge social implications. *Ḥalāl*[697] is totally contestable so far as the Muslim public is concerned.

In 1962 the Ministry of Health (through its Committee for the Evaluation of Health in Islamic Law) faced the problem directly.[698] A commercial taste enhancer, based on monosodium glutamate, was rumoured to contain material from swine brains and also the penis of swine. There was a high degree of public anxiety, much of it fomented by irresponsible media distortion and misinformation. In contrast, the Committee's *fatwā* is a model of sense and restraint. The *fatwā*, 67 pages long, is a small pamphlet and begins with a table of contents, foreword and introduction. The latter describes newspaper reports and the ensuing angst and concern within the

Muslim population. Pages 11–51 contain transcripts of letters from the ministries (Religion and Health) officials, from parliament, and from government scientists who tested 'Ve-Tsin'. The enquiry and the correspondence eventually took in other parts of Java and Sumatra and was extended to include other brands of flavour enhancer. It eventually involved the manufacturers themselves in an exchange of letters.

The manufacturers provided 'flow charts of our processes' and invited Indonesian officials to inspect the factory. There was no inspection (the factory was in Hong Kong) but the offer was undoubtedly sincere. Instead, chemical analyses and science notes from the National Chemistry Laboratory in Bogor were obtained. All together, this material takes up about 90 per cent of the booklet. Islamic material comes at the very end, the last eight pages, and consists of obvious Qur'ān citations (S II:173, XVI:115, V:3 and VI:145) plus *āḥadīth* (Abū Dāwūd) and textbook references (Ibn Taymāyya, *Kitab majmūʿal fatāwā*). The interesting point for us is that there is absolutely no discussion of this material. The final decision, that monosodium glutamate does not contain forbidden material, is based solely on scientific analysis. The decision is short, half a page, and it is an example of Islam being used as a reference framework rather than as a determining principle in a decision. We have seen examples of this earlier (above) in connection with medical science. The suggestion is, therefore, that in some cases there is no possibility of connection between Revelation and science (see below).

We turn now to the related issue—the use of animal products where elements of impurity are, or have been, present. For example, trading in the untanned hides of unclean animals is forbidden because they remain impure. This was the NU position[699] in 1932. The definition of 'unclean animal' is as in the Qur'ān and *aḥādīth* above, but also includes the monitor lizard[700] (see also below on new types of food). The Muhammadiyah adopts exactly the same position; impure foods are those specified in the Qur'ān and *aḥādīth.*[701] In addition, trading in the tanned skins of snakes and tiger is permitted but tanned pigskin is not,[702] citing al Tirmiḍhī, al-Nasāʾī and Ibn Mādjā.

A further example, again from the Muhammadiyah, concerns selling or trading in carrion. The *jawab*[703] in this case begins with the definition of carrion, which is anything not properly (i.e. ritually) slaughtered (see below on slaughter). It then lists out the classes of food which, despite not being properly slaughtered, are still lawful. These include fish ('the sea purifies everything'), locusts, liver and spleen. We should pause here a moment to remember that whatever the *aḥādīth* say—here Ibn Mādjā, Abu Hurayra—the Sunni *madhhabs* do have differences. Additionally, and a fact we forget too often, is that customary practices vary widely in all Muslim societies (see below on new types of food). Even in the heartlands of Islam, in the Arabic Middle East, practice and custom are inconsistent with strict *fiqh* rules.[704] In this Muhammadiyah *jawab*, carrion is not permitted for human consumption but it may be used for animal food.

Our final example takes us back to the 1930s, to a Persis *fatwā*,[705] where the issue is the lawfulness of deriving a profit from selling dogs or trading in dog meat. This *fatwā* is by Moh. Maʾsum. He gives three alternatives. First, that trading in dogs, whether they are useful or not, is forbidden, and cites five authorities (Ahmad, Bukhārī, Muslim, al-ʿAsqalānī's *Fatḥ al-bārī* and Abū Dāwūd). However, the passages on which he relies are all to do with deriving profit from a source which is evil in itself, such as money from prostitution or magic. This equation of the animal with actual impiety is not to the author's taste, because the classes of that which may not be consumed are specified (SII:173, VI:145) and do not include dog. It cannot, therefore, be *ḥarām* to sell dog (animal or meat). This is not an acceptable view in Indonesia (or Malaysia), and the weight of *fiqh* authority is against it.[706] Second, that one may trade in the animal provided it has the useful function of hunting. There is certainly *aḥādīth* authority for this view (Muslim, al-Nasāʾī, al-Tirmiḍhī), but Moh. Maʾsum rejects it on the grounds of weakness in transmission. The third (and, for him, correct alternative) is that it is *ḥalāl* to trade in and make profits from the animal. The reason is that there is no specific prohibition '. . . and this is a concession from Allah' that we may accept here because, as the Prophet explains, '. . . Allah does not forget anything'. The authorities cited include S II:173, 100 and VI:145 and *aḥādīth* from Bukhārī, Ahmad and Abū Dāwūd. The last are interpreted as authority for that which is not forbidden is permitted.

The matter remains debatable, and we see another aspect of the issue in types of food.

New types of food

The conditions of modern life now offer a great variety of hitherto unknown edible products. Two in particular have caused problems in Indonesian Islam—rabbits and frogs. The first is an unfamiliar animal for Indonesians and the second, while known, falls into the *ḥarām* class in the classical texts.

To take rabbits (*arnab, kelinci*) first: in the late 1970s, as part of a rural improvement program, the government introduced rabbit breeding as both a source of income for peasants and an extra source of available protein. The question then arose as to whether this was lawful, and in 1983 the MUI issued a *fatwā*[707] to say that it was. It is a short *fatwā* and merely quotes two *aḥādīth* from al-Sharqāwī, which are in fact also in Bukhārī and al-ʿAsqalānī. The first *ḥadīth* relates that the Prophet ate rabbit and the second that he touched but did not eat, although he encouraged the Companions to eat it. The MUI *fatwā* does not refer to any of the classical Sunni texts (e.g. al-Nawawī's *Minḥāj aṭ-ṭālibīn*), which clearly class it as *ḥalāl*.

The second *fatwā*,[708] on frogs, given in 1984, is more interesting. Again, the issue arose out of a government-sponsored program for rural development, the breeding of frogs for consumption and export. The issue caused

dissension among Indonesian '*ulāmā*', some permitting and some forbidding participation in the whole program. The issue is not new in Islam. The MUI was faced with the fact that the Shāfiʿī *madhhab* had always regarded frogs as *ḥarām* to eat. To avoid this the MUI adopted the Mālikī view which is to the contrary. In short, it is permissible to breed (Mālikī) but not to consume (Shāfiʿī) for Indonesian Muslims. This is a blatant *talfīq*, which was rationalised in the following argument. Consumption and breeding are two different things. The idea of breeding for 'use' (i.e. consumption) by others is permissible on analogy with the use of skin after tanning provided the skin does not come from an unclean animal. The body of the frog, as such, is not *najis*. The prohibition on consumption is because of the method by which it carries on its own life—that is, partly in and partly out of the water.

The motive for the argument is quite clear, to support a rural improvement program. But the analogy with tanning is unsuitable because it imports the notion of *najis* unnecessarily. As Professor Mudzhar says,[709] a better analogy would have been with crab, which is a common item of diet in Indonesia. The MUI was obviously in ignorance of the much earlier NU *fatwā*[710] of 1932 (above) which, in perfectly correct reasoning, dealt with the question of trading in tanned and untanned hides of unclean animals. As is the danger with *talfiq*, the introduction of a so-called rationalisation has created an internal chaos. It was open to the MUI to adopt the Mālikī rule alone as one of the Sunni *madhhab*.

Methods of slaughter

The methods required for animal slaughter to produce *ḥalāl* food for human consumption are well known. For the four Sunni *madhhab* it means cutting the throat (*ḥalqūm*), the oesophagus (*marʾī*) and the carotid arteries (*wadjuyn*), although opinion varies as to whether the last is required or only recommended. However, modern methods of mass slaughter, which involve machinery and the possible participation of non-Muslims (as in the export trade), raise the importance of the definition of *ḥalāl*. Its economic implications are immediate. While the issue has become pressing in the last few years, we need to remember that it is not new. We can go back to two Persis *fatāwā* from the 1930s, which clearly state the issues for us in 2003. The first[711] is a long and complex exposition in four parts and sets out the *aḥādīth* on the technique of cutting. There is nothing interesting for us in this part; but as to the second, the question of rendering the animal unconscious before slaughter:

> Now we will consider the case of animals which are rendered unconscious first by an electric shock or with chloroform before they are slaughtered.
>
> In my opinion animals which are rendered unconscious by an electric shock before they are slaughtered are still halal to eat because the animal would still be slaughtered before it died. There will be evidence of whether the animal

> was dead first or not. If the blood which flows out is red and liquid then it is clear the animal was not dead before slaughter. If the blood is black and thick, it will be clear that the animal was dead before slaughter.
>
> As for rendering animals unconscious first with drugs—this is better than electricity which can be seen as torture of sorts because it hurts the animal and torture is forbidden by Islam, even towards animals. Using drugs is not only painless, it helps counteract pain. This accords with what the Prophet intended.

Who may perform the act of slaughter—Muslim, Jew or Christian? Obviously the first, but the other two, as *Ahl al-Kitāb*, also qualify: '. . . The food of the People of the Book is lawful . . .' (S V:9). However, the author (Moh. Maʾsum) canvasses two options. The first is that the meat is *ḥalāl*, but the objection is that the slaughter has not in fact occurred with the *basmala* and is, therefore, unlawful. This is the second opinion. But the objection here is that the Qur'ān does not in fact specify this requirement in S V:6. The *bismallah,* therefore, is not a condition for meat being *ḥalāl*. The only classes of *ḥarām* food are those actually specified (carrion, blood etc.). This view is, in the author's opinion, supported by several *aḥādīth* (citing Abū Dāwūd, Bukhārī and others). The point is that the classes of *ḥarām* cannot be added to or amended, but this does not mean to say that the meaning of the *ayat* is beyond dispute. The *fatwā* itself, unusually for a Persis *jawab*, is confused and its conclusion is unacceptable.

Perhaps the Persis answer is in a short *jawab* on the lawfulness or otherwise of eating imported tinned beef.[712] To summarise:

> There are two types of slaughtered meat which may be eaten by Muslims. To summarise the relevant verses of the Qur'an and *hadiths* the first is meat that has been slaughtered by a Muslim using a sharp instrument (not teeth or nail) to cut the throat of the animal so as to sever its neck cord, while reciting Bismillah and done quickly so as to lessen the suffering of the animal.
>
> The second is meat that has been slaughtered by Christians or Jews. It says in the Qur'an—'the food of the people of the book is lawful for you'. (Q. Al-Maidah 5) Just as meat is not halal if it is slaughtered by a Muslim other than according to the Islamic way—so too meat which is slaughtered by a Christian or Jew otherwise than in accordance with their religion can not be halal. Therefore if corned beef is slaughtered according to the Islamic way or the Christian or Jewish way then it will be halal. However, according to news from those who have been to Europe the animals are not slaughtered but shot. Muslims in Europe who want to eat meat usually go to Jewish restaurants because they still slaughter animals according to the doctrines of their religion.
>
> Given that America is no different from Europe in every matter, we can not trust that meat from there has been properly slaughtered. Until now we have not heard of a Christian slaughtering an animal according to the method dictated by their religion, which should be the same method used by Jews given they have the same book.
>
> We can't be sure about the methods of slaughter used for corned beef and if we are uncertain we can't eat it, just as we can not eat an animal if we are

> unsure whether it was killed by a bite from a dog or by a bow and arrow or some other method.

The answer here is concentrated on the method of slaughter, and the real objection is not that Christians are involved but that they do not follow the method 'dictated by their religion'. The implication, therefore, is that it is the method (cutting) which is crucial for *ḥalāl*.

This is not the view taken in recent NU and MUI *fatāwa*. The first NU *fatwā*,[713] from 1981, permits mechanical slaughter provided the operator is Muslim and that the machine parts do not breach the *fiqh* rules for slaughtering instruments. The second *fatwā*[714] permits stunning animals before slaughter provided no element of pain or abuse is involved.

There is only one *fatwā* from MUI (1976),[715] which has already been described in detail by Professor Mudzhar[716] and, as he points out, is a rather strange decision. It reads:

> The slaughter of animals using mechanical means represents a modernisation showing compassion to animals slaughtered in accordance with the directives of the Prophet and satisfies the requirements *one of you sharpen the knife to give happiness to that which is being slaughtered so that it is not tormented in its slaughter.* Because of this, it is hoped that Muslims do not feel dubious about it. [Emphasis in the original]
>
> **Reasoning**
> The conditions which must be fulfilled for the slaughter of animals in accordance with Islam are set down by the four schools of thought and Haddith related by the Prophet's companions.
>
> Haddith related by Muslim and Syadad Bin Aus regarding the requirement to act with compassion in all actions:
> *'Truly Allah requires good deeds in all actions. If you are required to kill then do it in a compassionate manner, and if you need to slaughter do so by compassionate means.'* [Emphasis in the original]

The actual process of slaughtering was described in detail by the meat company involved. The animal was first rendered unconscious and the actual killing was done by Muslim workers, who pronounced the *bismallah* at the appropriate time. The discussion preceding the *fatwā* did mention, but did not detail, the ritual rules of the four Sunni *madhhab*. However, the *fatwā* makes no mention of the classical texts, nor to the Qur'ān. The only reference is to the single *ḥadīth* cited. The *fatwā* does not say whether a Muslim must be the slaughterer in all cases. There is no mention of a butcher from one of the *Ahl al-kitāb*.

We might here attempt some preliminary comment on the material in this section. The definition of *najis* is a constant theme, and this depends on showing that the nature and use of the object (food) is known with certainty. Use is always secondary to essential nature. The problem now is whether

certainty of attribute can be a given in contemporary science and society. This is not of course a totally new problem. For example, Persis discussed *najis* in the 1930s, and Ahmad Hassan said[717] '. . . something only becomes *najis* if its colour smell or taste is changed by contact with the contaminant'. He was here discussing the pollution of water by a dog. More recently, the NU decided[718] that water that has been through chemical processing is still water even though taste, smell and colour may be different from the original (citing *Iʿānat aṭ-ṭālibīn*). It retains the essential character of water, and although the *fatwā* is not specific it seems that this is defined by the fact that it can be *used* as water. As we saw earlier, alcohol is another example.

PUBLIC MORALITY

There are as many views about, and definitions of, public morality as there are public moralists. The Indonesian *fatāwā* from the 1920s to the present provide plenty of examples with a wide range—definitions of *aurat,*[719] women riding bicycles,[720] and the lawfulness of theatrical performances.[721] While these examples all demonstrate changing public mores, the focus in this section is on the issues of general public concern that raise important questions in *fiqh*. These are 'organised' *khalwat* (unlawful proximity) and *gharar* (gambling, here in the context of state lotteries).

Public massage

Touching another's body is problematic in all cultures and is especially difficult in Islam, particularly when persons of the opposite sex are involved. The popular perception of the massage 'parlour' is that it is a brothel. However, in recent years the phenomena of sports and medical massage and the growth of gymnasia (single-sex or mixed) have become common. Are these a threat to public morals in that they encourage or even require the proximity of male and female? The question is sufficiently important to have drawn a *fatwā* and a long discussion paper (*pandangan*) from MUI.

The *fatwā*,[722] given in 1982, was a response to a request from MUI Sumatra Selatan and from the Governor of that province. The decision was that for medical or sports reasons massage is *mubāḥ*. The reasoning has a number of components, as follows. First, nakedness: the general principle is that appropriate modesty must be observed, and the authority cited is the obvious S XXIV:30–31, '. . . turn their eyes from temptation . . . draw their veils' and so on. There is no discussion, just the citation. Second, persons of the opposite sex being together: the authority cited here is the *ḥadīth*:

> From Amir bin Rabiah it was heard that the Prophet said 'let he who is faithful to Allah never be alone with a woman who is not suitably related to him (Muhrim). For the third party with them is Satan'.

Third, medical treatment is justified by a short statement which has no attribution given but is a version of the *ḥadīth* that Allah has provided cures for disease (see above). Finally, in the *fatwā* itself, the prohibition on unlawful sex, citing only S XVII:32.

The *fatwā* is followed by publication of the discussion paper[723] in 1986, which was produced under the aegis of the Sports Health Centre in the Office of the Minister for Youth and Sport in Jakarta. The emphasis is on the use of massage as a method for rehabilitation of injured athletes and for the maintenance of physical fitness generally. The most important part for us is the section headed 'sport and health from the perspective of Islam', which reads as follows:

> Through sport we may protect our health which is ultimately a gift from Allah. In this way, the general meaning of health is a 'state of perfection from a physical, spiritual and social perspective'. According to Act No 9 of 1960 regarding the Principles of Health it is stated that:
> *'The meaning of health is a condition incorporating physical health, spiritual health and social health, not merely a state of freedom from illness, deformity or weakness.'* [Emphasis in the original]
>
> Through sport we have the health to undertake our tasks and responsibilities as Muslims. The two are accordingly inseparable. The following are accepted principles of Islamic law:
>
> 1. Truly the best people who we choose to work for us must be those who are strong and trustworthy.
> 2. A healthy mind is within a healthy body.
> 3. A believer who is strong is better than one who is weak.
> 4. Truly Allah will not alter the fate of a people unless they act to change themselves.

Massage for health purposes is natural and does not conflict with religion; same-sex massage only is permitted. Brothels are forbidden.

The conclusion from the *fatwā* and the discussion paper is that massage for a legitimate purpose is *mubāḥ*. Whether the same-sex requirement is or shall be the rule in practice is another matter. There is nothing technically interesting in the MUI discussion: obvious propositions are stated and supported by equally obvious Qur'ān and *ḥadīth* citations. The only real point of interest is a comparison with the 1930s Persis *fatāwā*, not to the result(s) but the underlying premises. The MUI proceeds from a rational secularism, Persis from an internal imperative which is God-derived. This is the real distinction, and we shall see it illustrated very well in the following section.

Lotteries

Chance, in the sense of staking money on the turn of a card or the drawing of a number shares some of the character of insurance. However, there is one fundamental difference: insurance always involves the element of *contract*,

even in its most 'risky' form. There is always a mutual obligation. This is not true for gambling because in *fiqh* there is no mutual obligation. The most risky contract known to *fiqh*—the *arāyā* contract in which unripe dates on the tree are valued in terms of edible dates, where the quantity cannot be known—is not an exception. The Muhammadiyah, for example, recognise the principle.[724]

The second point about gambling is that it is harmful and destructive to society and the individual and is thus forbidden (see below). But what of those circumstances where an act such as gambling is harmful yet one consequence such as the distribution of profits (e.g. from a state lottery) to charity can be good? To accept this is to accept the relativity of good and harm as themselves decisive. This is not an acceptable position in *fiqh* because secular public good is not the criterion from which a balance can be calculated. The criterion for *mubāḥ* can be congruent only with Divine prescription. This has not prevented some (secular) state authorities from attempting the former and even gaining '*ulāmā*' support. In Malaysia, for example, there are *fatāwā*[725] which allow the use of lottery proceeds for religious purposes (i.e. the building of a mosque) provided that the money has come *via* some government agency—that is, it is mixed with 'untainted' money and thus becomes untainted. The Malaysian argument, insofar as it is articulated, depends on *maṣlaḥa* for its justification, but state intervention is crucial. The assumption appears to be that the state, while not 'Islamic', promotes and protects religion especially in respect of what is, at first glance, a clear offence against religion. The Indonesian debate is rather more complex than the Malaysian, undoubtedly because there is a greater variety of sources.

We begin with three Persis *jawab*. The first,[726] by Ahmad Hassan, asks all the questions and exposes all the contradictions in the answers. He begins from the accepted position that lotteries (and even raffles) are gambling and thus forbidden. But often the public lottery proceeds are distributed for 'good' purposes, including schools, hospitals and the like. Ahmad Hassan's answer, in his own words:

> According to the rules of Syariah—all monies raised through activities which are haram, is also haram. If we look at it from this perspective it is clear that lottery monies are haram. We should not dismiss the matter here though, first we should look right and left and weigh up things according to the correct method of Syariah.
>
> In our country most are Muslim or declare themselves so and yet Islamic law is not in operation at all except in relation to matters of ibadat, inheritance and marriage. Lotteries are allowed to operate in this country and there is no ban on Muslims buying tickets. We can not stop them and however much noise we make, some people will continue to do so.
>
> Every time these lotteries are held, Muslims contribute hundreds of millions of dollars while the amount of the proceeds which Muslims receive in return for their schools is minuscule by comparison. So when we think about it

> again—we can't stop these lotteries from happening, we can't stop Muslims from entering and our schools need financial support.
>
> If we don't ask for and receive money from these lotteries it means we don't want to develop our schools. In that case our schools and hospitals will remain, as people say, average. In fact if we do not receive proceeds from lotteries we will actually be contributing to our own decline. If we do not receive the proceeds they will go to other non-Islamic groups especially Christian schools and hospitals.
>
> Do Muslims not understand that in the current environment the advancement of another group/community one step forward means we take several steps backwards? Don't Muslims understand that we have to take monies that if left for others would contribute to our own decline and others' advancement. Do Muslims not know that to let go of money which will become a threat to us is a sin, as though we paid someone to ruin us? Isn't it in fact compulsory for us to reject danger?
>
> Don't waste your time thinking about how something which was initially haram can become halal or even compulsory.
>
> Generally Islamic laws which are not related to their context or benefit, especially the laws of ibadat, may not be tightened or loosened. The variation which we are talking of is not based on opinion or desire but the laws of Syariah itself. Such a variation, as we have explained would not be found in a country where the laws of Islam were sufficiently in operation—such as Mecca. In such a country there are no lotteries and no need to consider these questions. Therefore, the law of Islam can remain as it was originally in the nation of Islam.
>
> In a country where Islamic law is not sufficiently in force, we must strive to the best of our capability to put it into operation. Where we are not able, then we are forced to relax the rules. We must assume the smaller risk to avoid the greater one.

The same view was expressed in a later *jawab*,[727] and, it should be noted, the Muhammadiyah of the time came to the same conclusion and was cited in a then contemporary Persis *jawab*.[728]

We can now come directly to the Muhammadiyah *jawab* dating from the 1970s to the late 80s. In contrast to the Persis *fatāwā* (and the MUI below), these *jawab* are concerned with small-scale and limited transactions. We find, for example,[729] that the prize in some contest of performance (reading, the card game of bridge) or skill is not gambling in the sense of S V:90, '. . . But commit no excess . . .'. The prize by its nature is small and the winner has not had to wager on the result. This last factor is important: there is no outlay in the gambling sense. The prize is a reward for participation. Similarly, the collection of money to buy prizes in competition is permissible[730] and a quiz contest for prizes is permissible. There are no authorities cited. Also, when one buys goods in a shop and then enters a draw, there is no difficulty. The prize is a bonus rather than a reward as such.[731]

When we come to serious gambling, the matter is otherwise. The case here is gambling on fighting cocks. It is common in Indonesia, and large

sums are wagered. It is forbidden as *gharar*.[732] There is additional comment that the practice is harmful and cruel to animals and the Prophet himself prohibited this. The authority cited is a *ḥadīth* from Umar.[733] On the other hand, human competition intended to demonstrate skill is permitted if it does not cause 'harm'.

This brings us to the final aspect of gambling, whether football pools are permitted or not. This is a matter of continuing controversy in Indonesia, centring around the state-run football pool (PORKAS—*Pekan Olahraga Untuk Kesejateraan Sosial*). There is still no official determination from MUI as to its status in *fiqh* and, as Professor Mudzhar remarks,[734] '. . . MUI has become even more reluctant to issue *fatāwā* even badly needed ones'. However, we do have a discussion paper from MUI-Jakarta,[735] statements by the Chairman of MUI, and a paper from the West Java Council of Pesantren (see Appendix), all from 1986.

The MUI-DKI wrote to the national MUI in January 1986, asking for a *fatwā* on the newly established (1985) state football pool scheme. In its letter MUI-Jakarta drew attention to existing state laws forbidding gambling in various forms and for various purposes. It drew attention to the Qur'ānic prohibitions as well. Its expectation was that these two sources must prompt the national MUI to issue a *fatwā* forbidding football pools. There was no answer from the national MUI, and in October 1986 the MUI-Jakarta wrote to the Governor of Jakarta setting out its position. After the usual ritual acknowledgement of the Pancasila, the letter repeats state legislation banning gambling as a crime. This discussion is quite elaborate. It is followed by an exposition of the social evils that result from gambling, especially among the poorer classes of society. Again, this is elaborate. It is only on the last page that we find any Islamic reference and this is to S II:219, V:90–91 and XXIV:54. The citations are partial in each case. The main thrust of the argument, therefore, is on secular legislation and social evil.

This is in sharp contrast to the paper by the Chairman of the MUI (Professor Ibrahim Hosen) and the West Java Council of Pesantren. Both proceed from premises internal to Islam, and we take them together; they form an argument, with the propositions put by the Professor being rebutted by the West Java '*ulāmā*'.

Professor Hosen is concerned to show that the PORKAS can be justified in *fiqh*. He begins by defining gambling:

> a game involving an element of betting which takes place between two or more opposing participants face to face.

His authority is S V:90–91, '. . . commit no excess . . .' which he interprets to mean, with respect to *face to face*, that a football pool cannot be said to be gambling. In addition, the players (i.e. the buyers of tickets) are not competing with each other. To this the West Java '*ulāmā*' reply that this is a distinction without a difference; modern technology has made a nonsense

of any 'face to face' condition. The second part of the '*ulāmā*' reply is that the *fiqh* texts do not make 'face to face' a condition. They cite six texts (plus S II:219), including Marāghī, to the effect that gambling means games of chance, luck, fate and equates to any game where the winner takes a material benefit for himself. 'Face to face' is not an exclusion. The '*ulāmā*' are correct.

The second argument raised by Professor Hosen is that Imam al-Shāfiʿī's *Kitāb al-Umm*, in the section dealing with contests of skill, can be interpreted to show that the laying out of money on chance can be justified in three instances: (i) where the prize is provided by government[736] or a third party; (ii) where only one party wagers; (iii) a referee or umpire is involved—this to avoid the 'face to face', which is gambling. The West Java '*ulāmā*' reject this interpretation because it is out of context. The section in *al-Umm* is on the interpretation of S VIII:60 and the later *aḥādīth* involving contests of skill in preparation for war. This is why a referee is necessary. The context, therefore, has nothing to do with straight-out betting. However, this is not the end of the matter; competition (*musabaquah,* Ar. *musābaqah*) in the sense used in S VIII:60 can and does involve a prize as a reward for showing a special or enhanced ability.[737] Gambling involves no work or effort. The intervention of a referee, which Professor Hosen proposes, is likewise not convincing to the West Java '*ulāmā*', but the latter have to deal with the fact that in the *fiqh* texts betting money on the outcome of *musābaqah* is permitted. The answer in this instance is that in the texts the function of the referee is to validate the contest, and if he himself is superior to both contestants then he takes the respective stakes. Again, this is not gambling on chance but a reward for superior skill. The conditions for betting are thus strictly confined; in a straight-out gamble there is no referee because the matter is decided by chance alone. The references are back to the time of the Prophet when the competition, which could include wager, had as its motive the protection of the *umma*:

> The purpose of the sports known since the birth of Islam as horse racing is to aid in asserting and defending rights. The aim is not to accumulate wealth or fame or prominence or other negative objectives as in the case of the majority of modern sports people. The purpose of all these sports is devotion and to gather strength to fight to defend the religion of Allah. Sports may be viewed on this basis in Islam. Anyone who fails to understand this objective has moved towards negative objectives which underlie the prohibition on gambling.

This is a subtle shift in argument and it rests on the definition of chance/risk, which applies to legitimate commercial transactions as well as to a wager on a game or a competition. This is Professor Hosen's third ground—that all money transactions involve chance to some degree and, inevitably, risk (see also above, on money and money contracts). To this the West Java '*ulāmā*' reply that gambling and competition are not the same.

This brings us to the nature of money speculation. The analogy drawn by Professor Hosen is, in the view of the West Java *'ulāmā*,' a false one. One cannot find common ground between S V:90–91 and S II:275. His argument, therefore, fails because *qiyās* cannot apply; there is no new case to be resolved. This is absolutely correct.

The next argument advanced in favour of soccer pools is that the profits are distributed by the state to benefit society, including Muslims. Even if the source of those profits is (possibly) *ḥarām*, the benefits far outweigh the possibility; therefore, the choice of accepting tainted money is the lesser of two evils. We earlier saw this proposition put by Ahmad Hassan, who was at least sympathetic to it (in 1936), but this is not the position of the West Java '*ulāmā*' in 1986. Their argument is that to do this is an imprecise and mistaken application of principle. No *ālim* has ever advocated recognising proceeds from gambling on the basis of choosing the lesser of two evils. As the West Java '*ulāmā*' say:

> The principle of choosing the lesser of two evils applies in the situation where there is no other choice and both possible choices are dangerous so that the path of less danger should be followed. For example, when a doctor is treating a pregnant mother and the doctor must choose between saving the life of the mother and that of the unborn child. The context of raising finance for the community does not resemble an emergency in which no option is available but to legalise gambling. Intensification of development and a sound economic context enable the raising of money for the public interest from other means. There are still many alternative source of finance for the public benefit. For these reasons the applicable principle is that avoidance of evils should have priority over seeking benefits.

This comment is buttressed by a reference to social evil, the consequences of permitting a false analogy. The references are to then current newspaper and magazine reports.[738]

The final point of contention comes out of a rather surprising source: it is Professor Hosen's reference to ʿAbduh's *Tafsīr al-manār*, which he reads as permitting lotteries. This is true but with two conditions: first, the purpose must be especially praiseworthy, for example building a school or a hospital; second, it must not cause enmity or neglect. Its purpose, in other words, is not individual profit but social good. The West Java '*ulāmā*' do not agree that football pools fulfil these two conditions because the primary aim of those who buy tickets is personal enrichment. An attempted justification by citing S LXV:2 is, rightly, rejected by them. This passage is on divorce and the part cited, '. . . And for those who fear God, He ever prepares a way out', has no possible connection (by *qiyās*) to receiving a lottery prize. As the West Java '*ulāmā*' rather caustically say, 'We are not aware of any Ulama who have yet made that analogy'.

There the matter rests for the time being. Competition with prizes is permissible. Football pools are disputed, and the *fatāwā* in Indonesia reflect the contradictions.

CONCLUDING REMARKS

The two issues raised at the beginning of this chapter—the definition of 'offence' and how the *fiqh* definitions work (or do not work) in contemporary Indonesia—demonstrate that *mubāḥ* is highly contestable. It is pointless to look for consistency because none is possible. To some jurists lack of consistency is a fatal flaw in a legal system. This is too narrow an approach to Indonesian *fiqh*. It is much more useful to acknowledge the fact of inconsistency and then to acknowledge also the real advances that the *fatāwā* demonstrate.

Perhaps the major achievement is a recognition that redefinition is possible and that the techniques of legal analysis, known for 1400 years, are capable of doing this. We are a long way from the defensiveness of 1900 and even the 1930s. In the material of this chapter, the 'edge' issues of money, food and public morality are met by questioning *how* one defines. In some instances science can be decisive but not wholly so; ethics, in the form of *mubāḥ makrūh* from whatever source (texts, Qur'ān), are ultimately decisive.

However, the 'edge' isues all have an international dimension; this is especially true for science and finance. The Indonesian *fatāwā* must be read with this in mind. As we have seen in the earlier parts of this chapter, much of the international effort is at the theoretical level. The Indonesian *fatāwā* do not refer to this material and the theorist from South or West Asia might well find the Indonesian *fatāwā* strange, inadequate or difficult. But this is to miss the point. Our *fatāwā* are local and given in our state and the circumstances of the time, and place. Circumstance is the determinant. We can take two examples.

First, on finance, whether institutional (bank) or peasant practices, the evidence from the Indonesian *fatāwā* is inconclusive and inconsistent with itself. Of course this must offend the pure theorist but the fact remains that the evidence is inconsistent. One cannot force the text, or canon if there is one, to say more than it does. Second, the same is true when we take science and Islam or, better, the appreciation of science in the Indonesian *fatāwā*. The various *fatāwā* do show that science actually determines the result. Again, this is not acceptable to the pure theorist but that is the evidence. While we may say that the Indonesian '*uālmā*' should not conflate *ʿilla* and *maṣlaḥa* the fact is that they often do this. The same is true in finance matters.

We have now inconsistency and uncertainty in these 'edge' issues. There is nothing particularly threatening about this state of affairs except for those who place a premium on certainty. But this is to misunderstand the *fatwā*; it is an acknowledgement of uncertainty at a time and place. These points are continued in the Epilogue.

Epilogue
Issues for an Indonesian Islam

I have been tempted to use the word '*madhhab*' in the title to this epilogue but, on reflection, it is probably premature. The *fatāwā* do not, as yet, provide sufficient evidence to support a case for showing an 'Indonesian' *madhhab*. However, there is every reason to keep the possibility in the forefront of one's mind in the sense that Indonesian conditions are the decisive contexts for *fatāwā*. As things now stand, the issues which the *fatāwā* demonstrate as fundamental open new avenues for a creative development of Islam in Indonesia. The purpose of this epilogue is to indicate what the *fatāwā* tell us at the beginning of the 21st century and what the issues for creativity might be.

As a preliminary we should bear in mind that the past century has demonstrated the fragile nature of the Syariah in Indonesia. This is by no means a special case: the whole Muslim world has seen the reformulation of Syariah in Western terms, whether imposed by colonial rule or adopted as part of 'reforms' aimed at modernisation. The 'Syariah' is now but a shadow of the classical jurisprudence and a travesty of the *fiqh* literature. There is no room for any creativity, even in the weakest sense. The Western-derived state is everywhere dominant.

These remarks do not apply to the *fatāwā*; the strength of a *fatwā* lies in its distance from the institutions of state although some states, including Malaysia and Indonesia, do attempt to control *iftā'*. It is a fact that those *fatāwā*-issuing bodies that remain the most distant from the state (e.g. Persis) produce the most intellectually coherent *fatāwā*. The converse is also often true. For example, quite a few of the recent MUI *fatāwā* can even now be read as historical curiosities. The effort to justify government policy in 'Islamic' terms strains both credulity and credibility. This is not necessarily wholly true for the bureaucratic *fatāwā* (e.g. from the Ministry of Health), but these *fatāwā* derive validity from science rather than dogma as such. The 'Islamic' element is often a mere colouring.

AUTHORITY

Any *fatwā* immediately raises the issue of authority (*ijāza*): by whom is it issued and on what grounds should it be accepted as a true answer to the question? Up until the early years of the 20th century the historical record shows a recourse to Middle Eastern authority. The best-known examples are the late 19th-century Meccan *fatāwā* on matters submitted from Indonesia.[739] However, from the 1920s the Indonesian '*ulāmā*' began the collection and publication of local *fatāwā* in Indonesian. As we have seen the Persis, Muhammadiyah, NU and MUI differ one from another over *taqlīd* and *ijtihād*, but the differences are not consistent either through time or by subject. It is not now possible to hold that these two methods are wholly in opposition in the contemporary *fatāwā*. But was this actually ever true in Indonesian *fatāwā*? The answer, as with so much else, depends on whom we are reading at any one time. If we take the 1930s, we can find *fatāwā* from Ahmad Hassan on the one hand and the NU on the other which do show a clear difference in method. That was the position in the 1930s, but more recent *fatāwā*, particularly those cited in chapters 4 and 5, show that the boundaries are by no means as clearcut as formerly. The MUI, which has been in existence since only 1973, demonstrates yet another aspect of the distinction. This is its sometimes quite uncontrolled recourse to eclecticism of source in a *fatwā* or advice paper. The issue of the state lottery (chapter 5) is a perfect example, showing a strong degree of internal incoherence. The 'frog' *fatwā* in the same chapter is another example. The Muhammadiyah give us yet another version in their insistence on 'contextualisation'. We all understand the motive, but the result is often a weak argument which proceeds from contemporary mores to historical authority as understood *now*. It is not sustainable (see further below).

This brings us to the second issue in *ijāza*: there is now a canon of *fatāwā* in Indonesia. It consists of the respective compilations from each of our four main sources, plus the additional 'bureaucratic' and minor (including personal) sources. The question is, does this canon constitute a collective *ijāza* for Indonesian Muslims? The answer seems to fall into two parts. First, is the canon itself set in stone for all time as it exists—does it yet form an authoritative collection? As we know, *fatāwā* are not precedent in the Western sense, although authoritative collections from the history of Islam are known and used. The answer in the Indonesian case must be no, and the reason is obvious. There is in fact very little reference to a preceding *fatwā* by a later committee in any of our sources. This is perfectly in accord with practice elsewhere; a questioner can always seek another opinion. The canon is not set in stone. Second, and this is specifically the Indonesian issue, are the members of the Persis, NU and Muhammadiyah, bound by virtue of membership alone? The NU and Persis appear to insist on this although Ahmad Hassan does quite often say '. . . decide for yourself . . .' but in a very challenging way. On the other hand, Muhammadiyah and MUI

each have an actual stated policy. For the former it is that 'This is our opinion which each member must decide on'. This is no position at all for *ijāza*: at best it leads to incoherence on dogma and law, at worst to a loss of authority. Many of the *fatāwā* cited in the previous chapters confirm this, and members of the Muhammadiyah are themselves fully aware of the problem.[740] MUI has a separate problem, which is basically government-induced. The national MUI is, in theory, in charge of the provincial MUI. Despite regulations and repeated requests the latter usually go their own way, providing *fatāwā* and opinion/advice for their own areas. Even in Jakarta the MUI-DKI does this, so that any suggestion of authority from the national MUI is rather weak.

The third issue in *ijāza*: is there a contemporary authority (or authorities) from the Middle East cited in the Indonesian *fatāwā*? The answer, shortly, is no. There are a few references but as often as not they are rejected. The only modern authors who make any impact are Sayyid Sabiq and Fazlur Rahman, and then only in Muhammadiyah commentary. The NU has specifically dissented from two Sheikh Al-Azhar. The absence of modern Arabic thought cannot be put down to ignorance. Books and essays from the Middle East are taught in the IAIN and there are many translations from Arabic into Indonesian, including *fatāwā*.[741] But this work does not appear in the Indonesian *fatāwā* except for the odd reference. Is this perhaps an indication of full confidence, that the *ijāza* for Indonesia is already in the Indonesian canon?

Finally, in the year 2002, many of the younger generation of '*ulāmā*' have already been to Western universities and have returned home with degrees in 'Islamic studies'. Are they '*ulāmā*'? At present it seems that they do comment on *fatāwā* but do not give them. Is 'comment' an opinion, and what now is an '*alīm* and what is *ijāza*? Can he and it come from outside classical Islam and, if so, do we have deviance in law and dogma? This question is purely to authority, and the answer will be, as always, in the politics of the day. However, it must be in defensible Syariah classes, otherwise it is nothing.

There is a further important aspect to the younger generation. It now includes the women graduates of IAIN and especially the female activists in the NU and Muhammadiyah, both of which have women's wings or groups. The Muhammadiyah and some sections of the NU do not now accept that the status of women is determined only by gender. In the 15th/21st century there are other ways of setting or determining capacity. Education is the most important, because it is the educated class which has and always has had authority. The fact that this class now includes women requires that authority be open to question.

THE LABELLING OF INDONESIAN ISLAM

Labels are convenient for newspapers and the demagogue. They are easy and all too beguiling. For Indonesian Islam we have 'modernist', 'traditionalist',

'conservative', 'liberal', 'fundamentalist', 'santri', 'abangan', 'real' Muslim, 'nominal' Muslim. These labels are the legacy of the past century. At the time each came into vogue it seemed an explanation for that time. Many of us still think in a set or series of these terms which have also been internalised into Islamic thought in Indonesia. Are they true, accurate, informative; or obscuring, distorting, just unhelpful?

The *fatāwā* in this book demonstrate just what a dead hand the labels of the past 50 or so years have come to cast on understanding Indonesian Islam. These labels are inappropriate because the *fatāwā* show us a different and more complex Islam. But the question remains: why the labels? Obviously, these are an aid to understanding Indonesian Islam using classifications that make sense, or appear to make sense, to the persons proposing the classifications. Without going so far as to say that they attempt to appropriate the data—an extreme Orientalism—these labels do construct images. Labels fix images, but an image is always confined by time and the intellectual fashion(s) of that time. The effect of imposing a label is to diminish that which is labelled, hence the surprise and sometimes consternation when the object—here the religion and the law of Islam—refuses to fill its stereotype. As I hope the following examples will show, image making is always a distortion, and Islam has always been peculiarly susceptible to this.

'Real' and 'nominal' Muslims: this was a common 19th- and 20th-century label and formed an important part of Dutch colonial thinking, especially for the NEI legal policy. It rested on the fact that in important areas of life (especially property) the *fiqh* rules did not determine legal obligation. Instead, *adat* (custom) was the operative system. From this it was concluded that Indonesians were not 'real' Muslims but 'nominal' Muslims. Essentially it reduced Islam to the status of a private religion with little or no legal effect. The distinction was and is unsustainable, and created immense difficulties for the Dutch administration: it may have appeared rational on paper but the history of Islamic judicial administration shows it to have been unrealistic. The *fatāwā* from the 1930s, particularly from Persis and the NU, show a much greater grasp of marriage and property within the whole context of 'Muslim'. These *fatāwā* never formed part of the 'official' law but represented instead an alternative at grassroots level. In post-Independence Indonesia we have seen the demise of *adat*, coupled with the much strengthened position of Islamic law in the state. The *fatāwā*, particularly from the 1960s in the areas of marital property, demonstrate even more clearly the inappropriateness of the 'real–nominal' classes. The reader may of course object to these comments on the ground that the *fatwā*-issuing bodies cannot do other than reject the possibility of 'real–nominal'. This is perfectly obvious, but the point is that the sheer number of *fatāwā* issued on property and marriage (especially inheritance) indicates that the distinction is not realistic. This does not mean that the *adat*–Islam dichotomy has totally vanished. In the Muhammadiyah and NU

fatāwā we find references to the former even now. The Muhammadiyah, as might be expected, refuse outright to accept *adat* that has legal consequences already provided for in *fiqh*. The NU, on the other hand, has been inconsistent over the years, and present practice, insofar as it can be identified to any degree, is rather anti-*adat*. This is consistent with the NU approach to secular law, which can be summed up as ultra-cautious.

'Traditionalist' and 'modernist':[742] these two terms have been common currency for many decades now. The base meanings are respectively (a) those who are governed by an inordinate degree of respect for expositions of classic doctrine (in law, devotees of *taqlīd*) and (b) those who advocate a direct intellectual and personal approach to Qur'ān and *aḥādīth* intending, by process of reason, to understand God's intentions for man and to express these in normative terms (in law, *ijtihād*). These are definitions in syariah but they also form the core of usage in the humanities and social sciences (though many practitioners of the last two do not realise this). Over time other synonyms, 'old-fashioned', 'conservative', 'modern/modernisation', have come into use to indicate a general position towards or approach to Islam. There is a huge literature for Muslim Southeast Asia,[743] much of which is as concerned with debating minutiae of definition as it is with explaining 'Islam'. Having said this, it is only fair to say that each discipline is perfectly entitled to define these terms as it thinks fit. But the Syariah is the basis from which one must proceed; Islam is pre-eminently defined in law. What now of the *fatāwā*: does the opposition of terms, or do the terms themselves, make sense? Can one demonstrate that *fatāwā* from one source are distinct from those from other sources on the basis of *taqlīd-ijtihād*?

The answer is no, and there are two reasons for this. First, as any Muslim jurist knows, *taqlīd* and *ijtihād* are not closed classes and have not been for some decades. The gate to *ijtihād* was opened long ago,[744] and this is as true for Indonesia as for other parts of the Muslim world. ʿAbduh, for example, spoke and wrote in the classical terminology of *fiqh*, although his intention was to create some sort of Islamic 'natural law'. The real point is not the distinction between the two but the quality and qualification of the '*ulāmā*' which, as we have seen, is an issue of *ijāza*. The point is that the ʿ*alīm* is also *mujtahid* (S XVI:43, 'the people of Rembrance'). The second, even more compelling reason following from this is that the Indonesian *fatāwā* cannot be made to show a consistent distinction over time. It is true that the NU *fatāwā*, especially in the 1930s–60s, show a bias towards *taqlīd*, but it is not a simple following. What we have is a creative *use* of *fiqh* texts. It is probable that the outside observer, by concentrating on the source text, has been misled into assuming *taqlīd*. This is an understandable result. The converse is true for the Muhammadiyah material in which, it is popularly supposed, *ijtihād* is unrestrained. It is true that many of the Muhammadiyah *jawab* lack an internal discipline, but this does not mean that the *fiqh* texts are not known or used. Even Persis, the home of *ijtihād* and the supposed 'enemy' of the classical texts, does cite them with approval on occasion.

The MUI also, if in an ill-disciplined fashion, at least does not take a false position of choosing one or the other. These comments can be verified by looking again at the *fatāwā* in chapters 4 and 5. There is, however, an objection that the reader will by now have noticed. In chapter 1, in the opening section on *fatwā* as method, each of the four main *fatwā*-giving organisations is described. Does this not demonstrate *taqlīd-ijithād*, in other words traditionalist-modernist? An answer in these terms has to be equivocal. A crude reply, in short form, for each source can be summarised as follows:

- For Persis: what is the epistemology, is there an *ijmā* on *ijmā'*? 'Allah did not command us to follow a crowd of '*ulāmā*'.' This is plain enough but, when taken with significant *fatāwā* where reference is in fact made to texts, the principle looks a little less certain.
- For Muhammadiyah: the overriding concern is with context of an issue and, while considerable stress is placed on *istiḥsān* (jurist preference for the good), the essential tool is *qiyās*. But the epistemology of *qiyās* is in *fiqh* texts, these are how one knows it. All that Muhammadiyah is offering is a guide to the sources. However, the approach is didactic rather than prescriptive in the Persis sense.
- For the NU: at first sight this is pure *taqlīd*, with a list of texts followed by a ranking in order of recourse. However, the method includes a 'framework for analysis', and this is a direct recourse to *ijtihād*. It has in fact become the most important part of the method and its centrality is demonstrated in the later NU *fatāwā* (1980s–90s, see chapters 4 and 5).
- For the MUI: the 'bases' are Qur'ān, sunna, *ijmā*, '*qiyās* plus the opinion of '*ulāmā*' of the four Sunni *madhhab*, and only then may *ijtihād* be employed.

In short, it is becoming increasingly difficult to maintain *taqlīd-ijtihād* as fully separate classes in the contemporary Indonesian *fatāwā*. This is evidence internal to Islam, and the outside observer, from whatever discipline, must be aware of it.

'Fundamentalist' and 'Liberal': these adjectives are an extension of 'traditionalist' and 'modernist' but are even more Eurocentric. In plain English they respectively mean 'bad' and 'good' as judged by the criteria of time and by the individual using them. The usage is invariably sloppy because it obscures or denies important issues in ethics. There is a simple example: the capacity and duty of women. As we have seen in chapter 3 both duty and capacity are fluid and not really definable with certainty. There is confusion and inconsistency, but this is only to be expected. The status of women in the so-called developed countries is at least as full of inconsistencies, a fact which sections of the Western feminist movement appear to forget when commenting on the 'Muslim' woman. Within the whole *fatwā* discourse there is a great deal of attention and emphasis placed on modesty in public. This is very often described as 'fundamentalist'

(bad); dress and forms of dress can of course be aggressive and ugly in intent. But this sort of simple labelling ignores the fact that modesty is a virtue, that it is required by religion, and that the dress indicates a morality which is both God-given and fundamental to decent society. The fact that the form of dress is unfamiliar, even physically restrictive, does not mean to indicate that it is 'fundamentalist'. That is not the view of the Muslim woman. The apparent restrictions as to capacity are also not to be read in a similarly imposed terminology.

The same is true of 'conservative', and this is part of the burden of chapter 4, where the *fatāwā* rejection of science is often read as wilful or obscurantist. If one actually reads the *fatāwā*, this sort of labelling is quite unjustified. The point being made in the *fatāwā* is that science cannot be value-free. There is a limit to how far human initiative can be permitted to interfere with or alter the natural (God-given) order. At the very least the *fatāwā* raise the primacy of ethics and, whether we agree or not that the issue is sustainable, the issue must be taken seriously. To ignore ethics is to descend into the confusion and moral inconsistency now characteristic of Western societies. To assume that science diminishes Revelation, which is what 'conservative' means here, is not only dangerous in practice but theologically illiterate. Compromise in the name of reason (i.e. to be liberal) is not an option, because one ends up with either theological impotence or with theologically illiterate cults. Indonesian Islam avoided both alternatives in the 20th century. Ahmad Hassan, for example, an arch-'conservative', was prepared to debate Darwinism in the 1930s, but his position was fixed in Qur'ān and *aḥādīth*, neither of which were negotiable. This provided a certainty for his arguments, which are consequently coherent and still of great importance today.

ISLAM AS OBJECT

The past 30 years or so have seen an Islamic resurgence; all this means is a renewed confidence in the face of secularism. Essential to this renewal is the realisation that Islam need not be defined or discussed in any terms other than its own. The idea is not new, it was the fundamental premise for ʿAbduh in the late 19th century. But the secular nation-state has not gone away. The state is an objective construction, it has its own canon, and thus Islam has had to develop a canon in response. From both the internal and external viewpoints Islam is subject to analysis in terms other than its own. There are seemingly endless discussions of 'the nature', 'the place', 'the structure', 'the meaning', 'change', 'gender in' and 'economics of' Islam. The mode of discussion is from outside Revelation; it is in contemporary theories of politics, social science, economics or any one of the philosophies of these. Some construction of 'Islam' is presented from these sources and then filtered through the fashionable theory of the day. I am not concerned with the truth or falsity of any theory; the point is that Revelation and 1400 years

of *fiqh* has been reduced to a passive object. This object, thing, can be mined, manipulated, treated as mere data, all the while ignoring the fact that it is a living system of obligation for Muslims. Islam has become an object for theorising about. Unfortunately, this practice has also entered into current debates within Islam.

We have several examples from the Indonesian *fatāwā*—one obvious, the others less so. The first is the bureaucratic *fatāwā* from the Ministry of Health (chapters 4 and 5). The primary point of departure is obviously science, and the Islamic references are to give colour, no more than that. This is not to say that these *keputusan* are false or untrue or given in bad faith. On the contrary, the motive and intentions are sincere, but Islam is still an object.

The matter is a little more complex in the case of the MUI *fatāwā*. As Professor Mudzhar has already pointed out,[745] they are not wholly government-oriented as to result, but at the same time the hand of government is on the MUI. It is an impossible position for the members of the committee, because distance from the state is essential to credibility. This explains the MUI objectification of Islam. It is not the same as the bureaucratic version just described. Instead, the MUI proceeds from the internal premises of the *fiqh* and at the same time converts these into an object; if one can have such a thing it is an 'internal objectification'. The MUI method (chapter 1) is not always followed because in some instances, not all, the committee allows the state policy to set the agenda. The *fatwā* on frog breeding (chapter 5) is a good example. The MUI discussion of deviant sects (chapter 1) is even more striking. The Ahmadiyah Qadiani are clearly deviant, but when we compare this *fatwā* to that on Al-Arqam we notice immediately the internal objectification. The Arqam doctrines are in fact perfectly respectable, and the MUI reason for declaring it deviant was its threat of splitting the Muslim community. What the committee considered was not the doctrine as such but an invented version ('object'), which could be classed as deviant.

The Muhammadiyah '*metod ijtihād*', on the other hand, offers a definition of law which requires (a) a purpose, directed towards (b) public benefit/interest. Both are constrained by Qur'ān and Sunna and by the limits on human reason that Revelation imposes. The core of the definition is really (b) public benefit/interest, and the assumption is that this can actually be identified in an objective sense. This is a large assumption; *istiṣlāḥ* can never be other than circumstance-specific, and the Muhammadiyah *jawab* demonstrate that the consequence of this position is not a stable objectivity but the acceptance of pluralism. On rational grounds there can be no other result, and this meets with considerable and vehement disapproval from groups such as *Media Dakwah.* The latter do have a point: *istiṣlāḥ* and *maṣlaḥa* are classes in Islamic legal thought but they are minor, or have been until recently, and are essentially empty classes. To use them on a 'rational' basis is to risk another sort of objectification. It is to say that

a principle of Islam can be arrived at by way of a rational hermeneutic. The Muhammadiyah *fatāwā* on the difference between bank interest and interest with a social function (chapter 5) is a perfect example. There is an undoubted rationale in the distinction (i.e. motive for accumulation) but it avoids rather than faces the problem of *ribā*. More positively, perhaps, it redefines it in terms of quantity (i.e. amounts of interest) and purpose. These are not generally acceptable in strict *fiqh*. On the related issue of context, which is the other essential of Muhammadiyah thought, see below.

The NU has largely avoided objectification by insisting on the primacy of *fiqh* classes. This is a strong position, historically tenable as well as certain in a world of rapid social and economic change. This does not, however, mean that the NU ignores the social or social-economic effects of a *fatwā*, which are certainly to be kept in mind. There are three *fatāwā* from 1994 that exemplify exactly this point. The first,[746] is on the question of minimum wages: may the state intervene to set a minimum regional wage? This is an issue usually approached from the standpoint of social justice and human rights. Insofar as there is any Islamic reference, it is almost always confined to citations from Qur'ān and *ḥadīth*, which are interpreted in the light of current views on the subject. The Islamic material is, thus, referential rather than determinative. The NU *fatwā*, however, proceeds from *fiqh* as to (a) employer–employee contracts and (b) the power of government to act in the public interest (*maṣlaḥa*). No fewer than 12 *fiqh* texts (Arabic plus Indonesian translations) are cited. The answers are that (i) contracts are binding and may not be interfered with (though this ignores secular legislation), and (ii) government may intervene, if existing state laws allow, only for the attainment of a general public benefit. Regardless of whether one agrees with the conclusion or not, the actual reasoning from *fiqh* is accurate and convincing. There is certainly room in the *fiqh* texts for social justice issues. The *fatwā* is satisfactory because it has an established method derived from sources which are certain.

The second NU *fatwā*[747] discusses environmental pollution. Pollution is not defined, except as harmful and no science is cited or referred to. Instead, the discussion is focused on harm, and the 11 texts cited focus on the consequences of a criminal act. In a way, this is not an entirely satisfactory *fatwā*. The nexus—pollution/danger—is not demonstrated in terms of aims (*maqāṣid*) of Syariah, in this case the protection of public health. It is perfectly obvious that this can be shown, but the point is that it is not, so that the argument for penalties is left somewhat hanging. However, there is enough to show that the issue is fully cognisable in *fiqh*. Finally, the third *fatwā*[748] permits government interference in land, provided it is truly for the public benefit ('*Al maṣlaḥah al ammah*') and compensation is paid. The common feature in these three *fatāwā* is that action must be cognisable in *fiqh*, thus avoiding any possibility of objectification.

Persis has also avoided objectification but by a quite different route. Ahmad Hassan and his colleagues stay firmly within the Qur'ān and *ḥādīth*.

With the exception of a few inconsistent *fatāwā*, where the author is clearly trying to impose a result, the Persis *fatāwā* are remarkably coherent. There is no sense of Islam as object and the result is that we read these *fatāwā* today, after half a century or more, as coherent expositions of principle. The fact that they stand comparison with the best of NU *fatāwā* is yet another demonstration of how misleading labels such as 'modernist' and 'traditionalist' can be. If the test of efficacy is consistency of reasoning, as it must be, then these two sources are on a par.

IS REVELATION PROBLEMATIC?

This question has three aspects that should be kept separated.

First, readers will recall plain differences of opinion between our sources on quite fundamental matters, most especially in the individual and religious obligations, the subject of chapter 2. Even such a basic as the Confession of Faith has argument as to additional words, but it is in prayer (*shalat*) that fundamental differences in emphasis and occasionally in practice occur. This is most obvious in the forms and formalities prescribed. For example, the recitation of the *Fatihah* has consistently attracted controversy. The issue is how it should be done. The NU in the 1930s reserved the recitation for the *imām*, and the worshippers should be silent. Recitation following the *imām* is forbidden; Persis, through Ahmad Hassan, canvasses alternatives including additions but in the end rejects them. The use of Arabic or Indonesian also caused and still causes difficulty, although the weight of authority from all sources is clearly towards Arabic as the ideal. It is also recognised that this is not a practical possibility. Anything else is an innovation. A perfect recitation is a matter of personal anxiety and has led to different views as to whether repetition in the case of a mistake is necessary (Persis) and actual choice of method of repetition using long or short vowels and long or short pauses between *hamzas* (NU).

Another aspect of this is whether the intention (*niat*) necessary for prayer may be expressed audibly. For Persis and Muhammadiyah it is an innovation, but the NU permits it although even here practice is not always consistent. All sources agree, however, that the actual forms of prayer may not be altered—for example, from singular to plural. Then, the cycle of ritual movement (*rak'ah*) is also disputed between Persis/Muhammadiyah and the NU, as is the correct ritual in reciting the *qunūt* prayer. There is also dispute in respect of prayers involving the dead, especially where sacred sites (*keramat*) are involved. Prayer while travelling has always caused difficulty because the definition of travel is always open to question. While each of the Sunni *madhhab* has detailed rules, the new circumstances of sea and air travel, the latter in particular, have raised new complexities. Times with reference to GMT and international datelines means that days and times for Friday prayers can never be established during a journey but only at destination. Of the four sources the MUI alone has attempted to deal with

this, but unfortunately it introduced a minority Ḥanbalī view plus a reference to Ẓāhirī doctrine. The result is a quite unnecessary *talfīq*. This result will certainly cause difficulty when compared with the (future) likely reasoning in the NU and, possibly, Muhammadiyah.

The Friday sermon (*khuṭbah*) also demonstrates a degree of dissension in the sources. The main problem has been language. Strictly, according to the NU, it should be in Arabic, with possibly an Indonesian summary. This is a view that Persis has always rejected on the grounds that a *khuṭbah* is no use if worshippers cannot understand it. The further ground is that it is not *ʿibādāt* in respect of language and can thus can be distinguished from prayer proper. These aspects of prayer, therefore, can be seen as problematic in our four sources, at least in public. As a result a general agreement is lacking, and one cannot really say that *mubāḥ* is a truly neutral class.

The fast (*shiyam*) is another subject for difference, in particular the 'make up' fast for those who have not kept it. The NU permits it subject to conditions, as does Muhammadiyah though on a different line of reasoning. This is actually quite interesting, the same result but quite a different rationale—yet another example that labelling is inappropriate. As one might expect, Persis forbids the practice but, uncharacteristically, the argument is incoherent, almost certainly in the face of general acceptance of the practice among Muslims of all opinions in Indonesia. In the case of travel and the fast, the NU treats the respective rules of prayer and fast as the same, but Persis denies any necessary analogy. The calculation for the times of Ramaḍān, especially its ending, is always controversial. The main issue is whether 'scientific' time or the traditional method of sighting should be followed. There is equivocation in all the sources, especially since the government has taken to publishing the times. Essentially, the arguments reduce to whether one accepts the authority of the state or prefers to follow the *aḥādīth* or the *fiqh* texts.

Authority is the second problematic aspect of Revelation: not only do we have differences among our sources but we have tension between them and the state, which attempts to control those of the Pillars involving money. The first is *zakāt* where the state, through a variety of agencies over the years, has attempted to collect the appropriate amount for distribution. All our sources (except MUI) are properly suspicious of an intervening body between donor and donee. Persis objects; the NU, by 1981, was prepared to consider the alternative but changed its mind in 1986, although even here with equivocal statements. The nature of property in its contemporary new forms (shares, bills of exchange and so on) is not known in either *fiqh* or *ḥadīth*, and we have the difficulty of assessing equivalence. The *fatāwā* are inconsistent in all the sources and the state Zakat Collection Board may very well become a viable alternative (assuming control of corruption). More important, the state insists on payment in money, which means that all aspects of *zakāt* must in future conform to the national finance system. The NU and Muhammadiyah are well aware of this threat to the dilution of

individual obligation. For example, the Muhammadiyah forbids capitalisation—that is, the payment of *zakāt* contributions into a central fund administered for the general good. However, the Majlis Tarjih is prepared to consider it provided (a) that the donees (the poor) consent and (b) that it can be shown that capitalisation would be more useful than direct payment. It is impossible to fulfil either or both of these conditions, but capitalisation is probably inevitable. The NU, on the other hand, rejects the notion outright. In 1981 the NU was prepared to allow payments for 'positive social ends', but in a series of *fatāwā* from 1986 capitalisation was firmly rejected. Similarly, new forms of property—for example, the increase in capital value of a hotel despite not trading or trading at a loss—has no parallel in *fiqh* texts. There is clearly a profit but, as is usual with NU, where the *fiqh* classes are inappropriate then there is no liability.

The next example involving money is the *Haj*. Funding has always been of concern, and here the Indonesian state has been completely successful in imposing its will. This includes the actual fares and costs, now paid to the Ministry of Religion, and also acceptance of state schemes, such as salary deductions for *haj* savings that have been accepted by the *fatāwā* sources. Again, the state has been successful in imposing its will as to *iḥrām* and this has been validated by MUI *fatāwā*, although it must be said that, as is not unusual in this source, some of the debate is unnecessary and confusing.

In short, so far as the Five Pillars are concerned, the state has successfully established its own position on times of fast, travel for the pilgrimage and, probably, the capitalisation of money. However, it would be bold to conclude that this is stable; uncertainty still persists in this as in other areas.

The third and final aspect of the problematics of Revelation is the scientific/bureaucratic *fatāwā*. The earlier discussion (chapter 4) shows us that science is taken as objective truth. Is Islam such? This is not the making of Islam into an object, as discussed earlier; instead it asks whether Islam can be proved to be true in the scientific sense, specifically alongside scientific evidence. The answer from the *fatāwā* is inferential, indeed oblique. It seems to be no, it is not, because the question stated in this way is essentially meaningless. For it to have a meaning God would have to be 'proved' in science. This is not the position in Revelation. But what then of Islam in the science-based *fatāwā*? It is not decisive—is it then merely a confirmation? At first sight this would appear to be so, thus making Islam problematic in the extreme, and it is easy to see how one can arrive at this position. It rests on accepting that science determines the ethical agenda. As we have seen this is not the internal Muslim position, nor for that matter is it universally accepted in the secular West. The *fatāwā* in chapter 4 show that the Islamic reference, brief and interstitial though it may appear, is fundamental because it gives the reason for acceptance or rejection of scientific truth. It is the truth of science which is relative. The argument is pursued below.

THE IDENTIFICATION OF PRESCRIPTION

The *fatāwā* state prescriptions; I use this more general term here rather than 'rule' to avoid confusion with judicial decisions. The '*ulāmā*' state prescriptions on the basis of texts which are knowable through the exercise of reason. The texts have an objective existence, and it is the function of reflective thought to understand and explain them for a time and a place. 'Reflective thought' (the phrase is R.G. Collingwood's) in respect of religion means '. . . to find the relation between . . . myself as finite and God as infinite . . . The discovery of a relation is at once the discovery of my thoughts reaching God and God's thought as reaching me . . . the special problems of theoretical and practical life all take their special forms by segregation out of the body of the religious consciousness . . .'.[749]

The 'special form' here is prescription and the *fatāwā*, especially in chapter 3, deal directly with capacity and the duty of women, which is about as prescriptive as one can get. This is the context for the historical texts common to the '*ulāmā*'. The various selections from these texts which are in the *fatāwā* show us one important aspect of prescription in respect of women. The historical sources ascribe prescription in terms of physical nature, from which flows the morality of capacity and duty. But the 20th century demonstrated that capacity is no longer in physicality; other criteria (education, economic realities) now determine duty in the nation-state. This is why the example of women is so central to the identification of prescription, and no other topic raises it in such an extreme form.

In English, 'may', 'should' and 'must' characterise actions. Islam is much more sophisticated in its normative classes (see below 'normative Islam'), but the English will suffice for the moment. The *fatāwā* set out prescription in the areas of (a) clothing, (b) leaving the house, and (c) the capacity of women to exercise authority. The first two raise personal morality and the third, authority and obedience. Traditional clothing, including the head cover, is variously interpreted in the *fatāwā* as essential to maintain modesty (all sources) and as protection in the intense war waged on the honour of woman in the contemporary world (Persis). Proper clothing is not, therefore, an option, and women who refuse to wear it are failing in a personal and social duty. There is dispute as to what is sufficient dress, the *cadar* is rejected as culturally not Indonesian and the Muhammadiyah even provide a photograph of the necessary and sufficient dress. Fashion is much suspected in all the sources: there is even 'dangerous fashion'(*bahaya mode*). The authorities cited to support this general position, which amounts to 'should' in English, are Qur'ān and *aḥādīth*. Women going out of the house is concerned with obedience, motive and necessity. Motives can be arranged in a hierarchy: the best motive is to pray, but even this is debatable. In *fatāwā* in the 1920s–40s the NU was unwilling to permit this except in case of unattractive or old women. Persis always permitted going out to pray provided proper dress rules are observed. The Muhammadiyah

prefers that women pray separately in a *mushalla*. So far as necessity is concerned, there is a similar divergence of opinion. The NU has always been equivocal, the Muhammadiyah accepts it reluctantly with various conditions, while Ahmad Hassan is violently opposed on the grounds that freedom to go out will lead to women exceeding their proper role and hence becoming a threat to the structure of society. He cites a*ḥādīth*, of course, but he is actually not talking about going out as such but about the possible threat to male authority. This, the third aspect of social propriety, has always caused considerable difficulty. The NU and Muhammadiyah permit women to teach and speak in public simply because there is no direct prohibition. But as for exercising authority in government, the matter is more difficult. Ahmad Hassan provides an example of 'reflective thought', in this case an interpretation of Qur'ān sources, to allow women to form organisations. However, as we have seen (chapter 3), he is not prepared to go further. The Muhammadiyah, on the other hand, in dealing directly with women in authority, allows it on the grounds that in the modern context women are capable in a way they were not in pre-modern Arabia. The *Majlis Tarjih*, in fact, is saying that the physicality on which the *ayat* and *aḥādīth* are based do now not apply because capacity can be redefined in other terms. The NU is equivocal, permitting some sort of authority position, but the *fatāwā* are inconsistent. Collingwood's 'special forms', here prescription, are diffuse and impossible to generalise.

From general social propriety we move now to contracts of marriage. A woman does not have full capacity, and the intervention of a *walī* is necessary to complete the contract. This is the standard Shāfiʿī rule. Only Ahmad Hassan in a long and complex *fatwā* argues for primacy of a woman's consent. His analysis of 24 *aḥādīth* has never been accepted, even though he does make the very important point that culture is as important in framing prescription for marriage as is the *fiqh*. This is certainly demonstrable from Indonesian anthropology. The Muhammadiyah does not really discuss the matter in detail, taking the standard position for granted. The NU has a quite extensive discussion although solely concerned with the capacity of the *walī* rather than the lack of capacity of the woman. As to the contract itself, the Muhammadiyah has monogamy as a preferred form, while Persis regards polygamy as the obvious answer to illicit sex. There is even a suggestion that it is a woman's duty (i.e. prescribed) to consent to this form for the good of the man and for the community as a whole. This is not an argument that would find much favour today but it is still occasionally heard in the form of 'social necessity'. Ahmad Hassan provides no text support—*saya rasa cukup*! The marriage contract must be the standard Shāfiʿī—*muʿta*, for example, is not recognised; (Muhammadiyah) but on the other hand the NU allows *muḥallil* (known colloquially as *Cina buta*). The *fatwā* does not mention the wife's consent, nor is it general to find *adats* taken in argument. This is a very important omission, particularly in respect of prohibited and acceptable degrees for marriage and the consequent inheritance rules (see

chapter 3). The respective prescriptions vary considerably. The identification of prescription is quite problematic in this area. Persis, at least, does discuss the issue, although no agreed solution is reached. The difficulties with reconciliation are another example and the general impression one gets from the *fatāwā* (especially NU) is that the woman is passive, and whatever status she has in *fiqh* is ascribed to her. An 'immoral' woman (*wanita jahat*) has totally lost any capacity, let alone status (possibly a reference to S XXIV:2). The Muhammadiyah has even capitulated completely to the secular Compilation of Islamic Law in the case of elopement.

This brings us to divorce, which is dealt with in all our sources. The main issue is repudiation at the initiative of the man and here, as is to be expected, the Indonesian *fatāwā* are less than consistent. The triple *ṭalāq* is the key around which the shedding of obligation revolves. Much effort has gone into showing that the triple *ṭalāq* does not lead to irrevocable divorce. An early Persis *fatwā* 'proves' this through a rather complex analysis of *aḥādīth*, while nearly 50 years later the MUI comes to the same result but not on the Shāfiʿī *aḥādīth*. Instead, through a combination of Ẓāhirī principle, current secular law (Marriage Law of 1974) and a Shi'ʿī reference, it finds that only one *ṭalāq* has been given. It is a strange *fatwā* and the only thing one can say with certainty is that the overriding explanation for the result is found in the Marriage Law. The NU, in 1989, took a different view. The NU position is that the classical *fiqh* texts are primary and the newly established religious courts are merely an implementing mechanism. This is not the view of the state, for which the religious courts are a mechanism to control religion.

We can easily see the extreme difficulties of identifying prescription for women from these examples, and we now take the issue of property. The *fiqh* can never be the only source of prescription. Even Persis admits the reality of *adats* in property, here marital property, even though the *fatāwā* attempt to describe it in Syariah terms (in this case partnership). The attempt fails and, even more telling, no *aḥādīth* authorities are cited. Broadly speaking, the same is true for the NU *fatāwā* from the 1940s to the 60s. When faced with the same question, distribution of acquired property on divorce, it was treated as a partnership, although its acquisition was by way of agreement under *adat* rules. A distribution made on respective contributions was expressly denied. The sources cited are minimal. The Muhammadiyah position is even simpler: it is to deny *adat* and insist on all property being dealt with exclusively in Syariah terms. The MUI has added its own special contribution to the issue: what of adoption, a common practice in Indonesia—does it give rise to property rights? The question is important not just for itself but because it does affect the property rights of women. The MUI gave the expected answer, that adoption had no property consequences, citing the standard *aḥādīth* and *fiqh*. However, it went on to involve the 1945 Undang-Undang Dasar and Maḥmūd Shaltūt. The effect is to open up the discussion of family, and hence wife; the issue has not as yet been developed in the later *fatāwā*.

Returning to Collingwood's 'special form', it is apparent that identifying a prescription is problematic, in this instance the capacity and duty of women. The same argument can easily be made in respect of medical science, bank interest and the other matters in chapters 4 and 5. It is pointless to look for certainty of identification because the values expressed in Syariah, although expressed timelessly, are in fact of the times in which the expression occurs.

NORMATIVE ISLAM

This term means the 'five values with which all legal acts must be labelled'. These are: *wājib*–obligatory, *mandūb*–recommended, *mubāḥ*–permissible or indifferent, *ḥarām*–forbidden, *makrūh*—permissible but repugnant. These definitions are taken from Professor Wael Hallaq's discussion[750] of legal theory. For our purposes the important progression is *mubāḥ-makrūh-ḥarām*. The *fatāwā* show just how permeable the boundaries became throughout the 20th century. How does this work? There are two interdependent answers.

First answer

The first is to examine whether the two supposed opposing classes, *taqlīd-ijtihād*, are actually opposed in practice. Perhaps the Indonesian understanding of how these classes work and what they mean is becoming localised? We begin with the formal statements of *fatwā* as method (chapter 1). Persis appears a simple case: it is Qur'ān and *ḥadīth*; quite clearly *ijtihād* is the basis for argument. However, whatever Ahmad Hassan says, the matter is not so clear because a linguistic analysis for the purpose of narrative, the basis of the Persis method, can never be wholly 'true' or wholly 'false'. To be fair, however, the Persis material does recognise the problem of assuming objectivity of a historical source, in its case, the *aḥādīth* and their *fiqh* elaborations. The latter are dismissed: 'Allah did not command us to follow a crowd of ulama'. But this does not really dispose of the problem; the *fiqh* texts, while dismissed, are still a sort of counterpoint to *ijtihād*, they are an essential point of reference from which one consciously dissents. 'Conscious' is the important qualifier; perhaps better is 'reflective' in Collingwood's sense. But what are the boundaries of reflective? The answer is in the history of *aḥādīth* and Ahmad Hassan is even able to read Darwin in this sense.

The Muhammadiyah method, stripped to its essentials, rests on the premise that history is objective and that the contexts of prescription can be historically ascertained. The key concepts are *qiyās, istiḥsān, istiṣlāḥ* and *Sadd al-Dharā'i'*. This formulation, the *metode ijtihād*, is internally inconsistent and rests on unproven assumptions about the history of religion. By its nature a history of religion is a history of imagination and emotion, because it is towards God. A historical objectivity is, by definition, unattainable in these

terms. The Muhammadiyah solution—*maṣlaḥa*—is not sufficient because 'public benefit' is ahistorical. In addition, as we have seen in chapter 3, it ignores the social reality of the various *adats* in respect of property. The most that can be said is that the Muhammadiyah *jawab* are a guide to sources, and this is in line with the position that the *jawab* are not in fact binding. The result is that *ijtihād* has become diffuse and *taqlīd* is not present. The question of opposing classes, therefore, is a false opposition in the Muhammadiyah method.

This is not the case for the NU, where *taqlīd* and *ijtihād* are truly opposing classes in theory (chapter 1). Having said this, it is also true that in practice the opposition is by no means consistent in all circumstances. As we have seen (chapters 4 and 5), the importance of general social and cultural factors is stressed in giving a *fatwā*. But at the same time a formal organisation of '*ulāmā*' acting on historically defined authority, (the *fiqh* texts) provides the certainty of authority (*ijāza*) necessary for a true result. It is the varying emphases of these two factors which should make us a little careful of accepting the ideology of *fatwā* method (chapter 1) at face value. *Mubāḥ-makrūh* is permeable and seems to be the preferred NU solution, while *makrūh-ḥarām* still remains a clear boundary.

These comments are not true for the MUI, which attempts to have the best of all possible worlds: this is *taqlīd* and *ijtihād* together. On the face of it we have a rational compromise, but this is its weakness. Rationality is not a criterion because, as Persis has always maintained, it gives us an eclecticism to excess. The MUI *fatāwā* show this all too often. Thus, when giving an answer we find arguments and sources brought in unnecessarily. *Taqlīd* and *ijtihād* in fact disappear as classes into a welter of rationalism. If this is thought to be too hard a comment, the reader might like to look at the *fatāwā* on prayer while travelling (chapter 2), purity of doctrine (chapter 1), and new types of food and state lotteries (chapter 5). The reasoning is inconsistent, and the progression *ḥarām-mubāh* is generally not supportable.

Second answer

These remarks introduce us to the second answer as to permeable boundaries. This is the 20th-century context within which the Indonesian *fatāwā*-issuing authorities find themselves—a newly established nation-state born in revolution, having a minimalist constitution, a series of ideologies (Guided Democracy, Pancasila) and a corrupt and intrusive bureaucracy. There is no Islamic reference as such except to a Supreme Being in the Pancasila. On the other hand, Islam is bureaucratically entrenched in the Ministry of Religion; it also has a revised religious court system and the Compilation of Islamic Law.

With the part exception of MUI, the *fatāwā* are quite separate from these contexts. This does not mean to say that the Indonesian '*ulāmā*' are not aware of those laws and institutions; of course they are, individually and collectively. However the values of action, the normative classes are now

represented in the *fatāwā* (prescription) but not in codes, bureaucratic process or religious courts (decisions). The agenda for these last is state-determined, which means that they are sustained by the authority of the state. We, therefore, have two normative Islams, the *fatāwā* and the 'official' Islam

The important question is how these two sets of prescription will impinge on each other. It may be that this will not happen, that two parallel universes will remain. This seems to be the circumstance at present. There is a simple reason for this: the judges in the religious courts and in the courts at cassation level have no or very little classical training. They apply the Compilation and the bureaucrat issues appropriate forms. This is not the world of normative classes. Whether young '*ulāmā*' from the IAIN will enter the system is not clear. On the other hand, the *pondok/pesantren*, even *madrasah*, are still capable of and do provide the essential classical studies.

Appendix
Sources

The purpose of this note is to introduce the reader to the basic sources for this book. It should be noted that the spellings used are the Indonesian transliterations. The reason for this is to allow the reader direct access to the source material. Most transliterations are easily understood but where there is a possibility of doubt I have given the EI^2 system as well. A breakdown by subject is provided for ease of reference.

NAHDLATUL ULAMA

The NU source has two titles, first in Indonesian: *Masalah Keagamaan: Hasil Muktamar dan Munas Ulama NU*—'Problems in Religion: Proceedings of the Congresses and National Deliberative Council of the NU 'Ulāmā''. The second in Arabic: *Ahkāmu'l-Fuqahā'*—'Rulings of the Learned in Fiqh'.

There are various editions; the one used here is the 1977 edition, updated to 1994, compiled by K.H. Abdul Aziz Masyhuri and published jointly by P.P. Rabithah Ma'ahidil Islamiyah and Dinamika Press, Surabaya. It contains *fatāwā* from the First Congress (October 1926) to the Congress of December 1994. Proceedings of the 17th, 18th, 24th and 25th Congresses are not included. There are 403 *fatāwā* published in date order. There is no attempt to classify by subject but the following summary should help the reader locate material in which he or she is interested.

1926: There are 27 *fatāwā*, of which 11 are on *'ibādāt*, two on custom (*adat*), one on offences against religion, and the remainder on practical issues of Islam in society. The latter include *zakāt*, the use of musical instruments and games. The first three *fatāwā* are on recognised schools of law and the method of giving *fatāwā*.

1927: There are nine *fatāwā* all on the practical issues of Islam in society. Of these, five are concerned with various sorts of money contracts. Of the remainder, two are on the wearing of European dress and its significance for Muslims.

1928: There are 22 *fatāwā*, of which four are on *ʿibādāt*, two on dogma (the positions of Jesus and Abraham respectively) and the remaining 16 on social issues. Of these seven are on marriage and divorce, four are on dogma, one on mail order contracts, two on *zakat*, one on contract, and one on the use of a legacy for mosque purposes.

1929: There are 26 *fatāwā.* Apart from one on *ʿibādāt* and five on dogma, the remainder concern mosques (two), contracts of various kinds (17), including a Muslim working on an unbeliever's land, and one on *zakāt*.

1930: There are 23 *fatāwā*, of which seven are on dogma and *ʿibādāt*, two on Muslims and unbelievers, eight on marriage and children, three on contracts, one on alcohol and the remainder on Islam and customary beliefs, for example guardian spirits of a village, ceremonies for pregnant women.

1931: There are 11 *fatāwā*, of which seven are on *ʿibādāt* and dogma. Of the remainder, one is on inheritance, one on mosques and one on the treatment of a corpse.

1932: There are 11 *fatāwā*, of which three on *ʿibādāt* and dogma, four on contracts, one on marriage, and three on offences against religion, for example wearing silk cloth, selling the hides of unclean animals.

1933: There are 15 *fatāwā*, of which nine are on *ʿibādāt* and dogma, two on offences against religion—for example, improperly dressed women leaving the house, and leasing a house to a Zoroastrian. The remainder include *zakāt* (three) and name change (one).

1934: There are 12 *fatāwā*, including six on *ʿibādāt* and dogma, three on contracts, and three on corpses.

1935 (including both 10th and 11th Congresses): There are 40 *fatāwā*, 24 of which are on *ʿibādāt* and dogma. There are three on offences against religion (e.g. attending a theatrical performance), six on marriage, one on women making religious speeches, one on the status of women, three on contracts, and two on *zakāt*.

1937: There are 18 *fatāwā*, of which 12 are on *ʿibādāt* and dogma, three on husbands and wives, one on bank deposits, one on mosque property, and one on the statutes of the NU.

1938: There are 22 *fatāwā*, of which seven are on *ʿibādāt* and dogma, eight on contracts including contracts where *zakāt* is in issue, one on oaths, one on inheritance, one on prevention of pregnancy, one on reading the Qur'ān,

two on the NU as an Islamic organisation, one on marriage, and one on offences against religion (in this case photographing animals).

1939: There are 21 *fatāwā*, of which nine are on *ʿibādāt* and dogma. There are four on *zakāt*, one on husband and wife, one on women riding a bicycle, one on inheritance, two on contract, one on mosques, one on resisting the tyrant, one on photographing animals, one on superstitions, and one on life insurance (the first time this has come up).

1940: There are 13 *fatāwā*, only one of which is on *ʿibādāt*. There are three on husbands and wives, four on contracts, two on women going out of the house, and one on supporting a Muslim business.

1946: There are five *fatāwā*, all of which are on the duty of Muslims to resist the 'colonisers'. The subject is 'Holy War'.

1954: There are five *fatāwā*, two of which are on *ʿibādāt* and dogma, one is on plays containing Islamic elements (forbidden), one on mosques, and one on the duty of Muslims to obey the President of Indonesia.

1957: There are two *fatāwā*, of which one is on women becoming members of parliament (permitted), and one is on bank cooperatives, interest and lotteries.

1960: There are 19 *fatāwā*, of which five are on *ʿibādāt* and dogma, three on *zakāt*, five on marriage (including marriage to a non-Muslim), one on inheritance, one on family planning, one on insurance, one on food additives, and one on ulama in government service.

1961: There are six *fatāwā*, of which one is on alcohol in perfume, one on mosques, one on contract, one on bequeathing land to a state school, one on contract of marriage, and one on cornea transplants.

1971: There are nine *fatāwā*, of which three are on *ʿibādāt* and dogma, four on possible offences against Islam (bank interest, photographs, the reproduction of Qur'ānic verses, milk banks), one on *zakāt*/*wakaf*, and one on the duty of NU members of the legislature.

1979: There are six *fatāwā*, four are on *ʿibādāt* and dogma; these all concern records and translations of the Qur'ān. There is one long *fatwā* on sex-change operations, and one on *zakāt*.

1981 (Not described as *Mukhtamar* 'Issues of the World—Decisions on'—*Musail Dunia Keputusan Munas Alim Ulama* NU, Jogja, August): There are 11 *fatāwā*, four of which are on organ transplants, one on the mechanical slaughtering of animals for food, four on *zakāt* including one on *zakāt* from the hotel industry, one on money including cheques and company shares, and one on the Haj (*miqat* re arrival in Jedda by aircraft).

1983: There are six *fatāwā*, of which three are on *ʿibādāt* and dogma (including one which states that the only acceptable texts are the Sunni

mazhab), one on the duty of the doctor to the patient, one on slaughter of animals for food, and one on adoption.

1984: There are 16 *fatāwā*, which can be grouped as follows—five on sacrifices of animals for ritual, five on *zakāt*, two on place of Friday prayers (e.g. in an office), three on cheques including blank cheques and post-dated cheques, and one on Haj.

1987: There are eight *fatāwā*, of which three are on '*ibādāt* and dogma (including one long exposition on fixing the times for Ramadan), four on *zakāt* (including one on *zakāt* and the hotel business and one on the impact of fertiliser on crop yields), and one on cooperatives for saving and lending money.

1989: There are 23 *fatāwā*, of which four are on the Haj (including one on travel by air), one on preventing menstruation, and one on savings credits for civil servants. There are four on marriage and divorce, four on medical science (organ transplants), five on contracts (including foreign exchange contracts), two on *zakāt*, one on student welfare funds, and two on dogma.

1992: In the *Akhāmu'l-Fuqahā'* only one reported *fatwā* is given for this year. This is the Method of Determining Decisions. (See chapter 1 for an extensive citation.)

1994: There are nine *fatāwā*, of which three are on organ transplants and contraception, one on the Haj (which discusses Indonesian pilgrims in Saudi Arabia), one on government and minimum wage, one on employment of women outside the home, one on contracts, one on public land, and one on pollution as a crime.

MUHAMMADIYAH

There are two main sets of sources, which we can distinguish as 'issues' and 'interrogatories'. They share the same formal structure, which is an arrangement by subject (*kitab*).

Issues

Himpunan Putusan Majlis Tarjih Muhammadiyah—'Collection of Principles by the Muhammadiyah Council for Opinions', Jogjakarta: Pusat Muhammadiyah, 1998—reprint of 1967 edition. This book can be best described as statements of principle, hence issues calling for answers. It is set out as follows:

(i) Iman: belief in Allah, in the angels, in the holy books (old and new testament), the hereafter and religious obligations. There are 12 statements of principle plus 20 pages of Qur'ān and *ḥadīth* sources.
(ii) Thaharah: ablutions, washing of shoes, washing, purification with sand, getting rid of impurities. There are five statements of principle plus 25 pages of Qur'ān and *ḥadīth* sources.

(iii) Shalat: methods of prayer. There is one long statement of principles plus 27 pages of Qur'ān and *ḥadīth* sources.
(iv) Shalat Jama'ah and Jumaʿh: call to prayer and the Friday prayers. There are four statements of principle plus 32 pages of Qur'ān and *ḥadīth* sources.
(v) Zakāt: calculation of the rate, the rates on cultivated land, livestock, gold and silver, the recipients of zakāt. There are five statements of principle plus nine pages of Qur'ān and *ḥadīth* sources.
(vi) Shiyam: the fast, times of fast, missed fasts, meals before and after the fast times, charitable deeds. There are seven statements of principle plus 11 pages of Qur'ān and *ḥadīth* sources.
(vii) Haj: ihram, prohibitions in the iḥrām, tawaf, sa'i, umrah, going to Arafah, wuquf, types of kifaret, tawuf wada'. There are nine statements of principle plus 27 pages of Qur'ān and *aḥadīth* sources.
(viii) Janazah: method of preparation, washing the body, wrapping the body, prayers, burial, visiting the gravesite. There are seven statements of principle plus 32 pages of Qur'ān and *ḥadīth* sources.
(ix) Waqaf: principles of waqaf. One long statement of principle plus four pages of Qur'ān and *aḥadīth* sources.
(x) Masalah Lima (Five Matters): religion, the world, worship, the way of God, qiyas (reasoning by analogy). Unsupported statements on each.
(xi) Beberapa Masalah (Other Matters): this is a long section in the *Himpunan*. There are 21 different issues dealt with, some with Qur'ān and *aḥadīth* references and some with no references at all. The presence or absence of reference is indicated:
    - Hukum: those who worship prophets after the Prophet Muhammad; several *aḥādīth* cited.
    - Hukum gambar: the usual *aḥādīth* on representation.
    - Hal api unggun and Hisbul Wathon: scouts, no references except to *aḥādīth* on modesty.
    - Wanita berpergian: on the gift of money to provide a separate building in which women can pray—a *mushalla*. A complex discussion on charity and conditions. Includes also women leaving the house unescorted with extensive *aḥadīth* references and also to 'An-Nisak' (which is S IV:22–23) on prohibited degrees for marriage.
    - Arak-arakan (pawai) 'Aisyiyah: women may not parade or process except at celebrations to mark the end of Ramaḍān. *Ḥadīths* cited.
    - Guru pria mengajar wanita dan sebaliknya: men may teach women and women should be taught. *Ḥadīth* from Bukhārī. Women may also teach men on condition that the proprieties are observed.
    - Hukum pria memakai emas dan perak: forbidden, *aḥādīth* by Muslim, Tirmiḍhī and Nasāʾī, but permitted for women.
    - Masalah hisab dan ruʿyah: date of sighting or actual sighting of the moon, both permitted. *Ḥadīth* by Bukhārī cited.

- Hukum lotery: ḥarām for uncertainty, but debatable. No authority cited.
- Membuka terumpah dalam kuburan: review of *aḥādīth* by Tirmiḍhī, Abū Dāwūd and others.
- Bank Muhammadiyah: on *ribā* with reference to *aḥādīth* by Muslim and Abu Hurayra.
- Keputusan Tarjih Sidoarjo (pp. 304–13): a miscellaneous collection of principles, with and without cited authorities, on masalah bank, masalah keluarga berencana, masalah lotto, masalah hijab and masalah gambar. *Ḥadīth* cited.
- Kitab Shalat[2] Tathawwu' (pp. 316–35): forms of prayers, tahiyat masjid, shalat rawatib with extensive *aḥādīth* references from all the '*al-kutub al-sitta*' (the six ṣaḥīḥs).
- Kitab Keputusan Tarjih Wiradesa (pp. 337–70): this book dates from April 1973 and deals with shalat tathawwu', sujud tilawah, zakāt, qunut, 'Aisyiyah and assuransi. There are extensive citations from Qur'ān and *aḥādīth* plus dalil (here, explanation/argument).

Interrogatories

Tanya-Jawab Agama—'Questions and Answers on Religion', Jogjakarta, Pusat Muhammadiayh, 4 vols, 1990–98. In contrast to the material in the *Himpunan*, the contents of these four volumes are answers to direct questions. The total number is 632 jawab. There is a standard format which has some slight variation, and for that reason I take each volume separately.

Vol I (each entry prefaced by 'Masalah')
Aqidah, Quran dan hadits, Makluk dan Surga, Sahadat, Shalat, Adzan, Wudhu, Mandi, Tayamum, Sedekap, Sujud dan Tayiyyat, Doa iftitah, Basmalah dan Membaca surat, Shalat Qudha, Jama' dan Qashar, Shalat Jumat & Jamaah, Doa Sesudah Shalat, Shalat Sunat dan Hari Raya, Janazah, Puasa, Zakat, Haji, Hari[2] Besar Islam, Basmalah Masjid, Kurban, Keluarga, Perkahwinan, Makanan, Kesehatan, Ilmu, Bunga, Gadai dan Suap, Hubungan dengan non-Muslim, Warisan Maksiyat, Janazah, Organisasi.

Vol II (each entry prefaced by 'Masalah')
Alam Kubur dan Akherat, Shalawat dan Tasawuf, Kejadian dan Amalan Manusia, Quran dan Hadits, Wudhu dan Mandi Wajib, Bacaan dan Gerakan dalam Shalat, Shalat Fardhu dan Sunat, Sujud Sahwi, Adzan, Shalat Jamaah, Hari Raya, Janazah, Pakaian dalam Shalat, Zakat, Puasa, Haji, Perkahwinan, Doa untuk Orang Sakit, Wasiat, Warisan, Keluarga, Kesenian dan Adat, Ekonomi, Hubungan dengan non-Muslim, Ke-Tarjihan.

Vol III (each prefaced by 'Masalah')
Aqidah, Quran dan Hadits, Ghaib, Adzan, Hadats (sic) Kecil dan Besar, Shalat, Bacaan dalam Shalat, Gerakan dalam Shalat, Shalat dalam Jama'

dan Qasar, Shalat Jum'at dan Jamaah dan Sunat, Ru'yah, Shalat Hari Raya, Puasa, Zakat, Haji, Qurban, Perkahwinan, Janazah, Wakaf, Ekonomi dan Perdagangan, Kesehatan, Ketarjihan.

Vol IV (each entry prefaced by 'Masalah')
Qur'an dan Hadits, Adzan, Hadats Kecil dan Besar, Shalat dan Gerakannya, Bacaan dalam Shalat, Shalat Jum'at dan Jumaah, Shalat Sunat, Puasa, Qurban, Zakat, Perkawinan, Keluarga, Wanita, Janazah, Warisan, Hari Peringatan.

Persatuan Islam (PERSIS)

From its inception in the early 1920s (1923 is the conventional date but, given the informal nature of its organisation, it is no more than an approximation), Persis published vigorously. The major collection is the *Soal-Jawab* (*Sual-Djawab*) 1931–42, a compilation collected from *Pembela Islam*, *Al-Fatawa*, *Al-Lisan* and *Al-Taqwa* (the last in Sundanese).

The edition used here is in two volumes and four parts, having a total of 621 *fatawa*, and published in1996 at Bangil, East Java. It is a reprint of an earlier edition published by C.V. Diponogoro, Bandung. The material is systematically arranged by subject, as follows.

Vols 1–2
Tamhied, Thaharah, Shalat, Shalat Jum'ah, Jenazah dan Kuburan, Zakat, Shaum, Haji, Wanita-Kudung-'Aurat, Makanan, Minuman dan Sembilihan, Jual-beli dan Riba, Fara-idl dan Hibah, Do'a, Hadits, sekitar Nabi dan Berbagai Masalah.

Vols 3–4
The same plus one extra section on Al-Qur'an. Some of the most interesting *fatāwā* are under the heading Berbagai Masalah, 'Various Problems', which total 125 (31 in Vols 1–2 and 94 in Vols 3–4) or just under 20 per cent of the whole. The topics are as follows.

Berbagai Masalah
Vols 1 and 2. Allah tunggal–Baca Qur'an di rumah orang kafir–Bising di masjid–Menghukum bukan dengan hukum Allah–Pemakaian hadits dla'if–Hadits dan syarat shahnya–Haqiqat, ma'rifat, dan thariqat–Dari hal gambar–Gambar–Pemimpim membiarkan orang berma'shiat–Lotere–Main dan melihat sandiwara–Membaca maulud Nabi–Nabi Muhammad manusia atau bukan–Murtad–Nabi Isa berbapak?–Sifat anggauta badan Nabi saw–Nasikh mansukh–Membanggakan keturunan, kesukuan–Takhaiyul, 'azimat, keramat–Taqlid kepada 'ulama–Campur barang No. 1 dengan barang No. 2–Hukum mengkafirkan orang Islam–Adzankan bayi yang baru lahir–Bid'ah–Bekam (cantuk)–Bumi beredar–Judi–Gerhana menurut Al-Qur'an–Hamba–Masjid–Perkataan 'ulama.

Vols 3 and 4. Urusan bismallah–Tembak rusa tidak pakai bismillah–Haram israaf di makanan–Haramkah binatang curian–Telor ayam yang mati–Ayam

yang digilas mobil–Daging dalam blik (Corned beef)–Rokok–Wahyu–Nabi yang masih hidup–Ibu bapak Nabi–Adakah Nabi-nabi setelah Nabi Muhammad–Do'a nisfu sya'ban–Terhapus dosa dengan bacaan–Bertasbih dengan jari–Hadiah 'amal–Ijazan untuk mengamalkan satu kitab–Peliharar anjing–Cara jin beragama–Mengadadkan bioskop–Hasil bioskop buat masjid–Uang mendirikan masjid–Riba bank–Hutangkan padi–Sumpah–Ijab-kabul dalam dagang–Shadaqah anak untuk orang tua–Cerita tentang Abdul Qadir Jaelani–Perayaan maulid pemimpin–Pertapaan dalam Islam–Cara bertaubat–Mengucapkan syahadat dengan bahasa sendiri–Perkataan 'awwaluddin ma'rifatullah'–Dari hal takdir–Mengurung burung–tabik–Keteranganan Nabi Isa tak berbapak dari Qur'an–Kelebihan istighfar–Berdiri waktu dengar Qur'an–Kejadian Hawa–Laki-laki pakai emas–dari hal ijma'–mafhum mukhalafah–Hukum peringan hitam–hal lotere (undian)–Selamat tahun baru–Tuhan berembuk dengan malaikat–Dzikir Allah-Allah–Gelar haji–Hukum membuka surat orang lain–Lotere–Berdagang dengan kafir–Sawah yang digadaikan–Mengenal Allah–Sembah Tuhan–Salam kepada kafir–Wajibkah salam–Tabligh di gedung bioskop–Pemuda–Ilmu magnet-isme–Kebiri–Tujuh langit–dari hal sikat gigi dari bulu babi–Anak musyrik–Manusia yang pertama–Sorga dan neraka–Al-Qadla dan Al-Qadar–Nasib–Melihat malaikat–Bersiul–Cara taubat–Halal bi halal–Ayat taklid–Al-Fatihah dan wal-ashri–Pertanyaan ayat-ayat al-Kahfi ke 27–Ayat-ayat tentang sorga-neraka–Memilhara jenggot–Ketua mana harus dita'ati–Dikhitan oleh dokter yang kafir–Upah mengajar agama–Datang di undangan yang dikerjakan padanya bid'ah–Sifat-sifat Tuhan yang sama dengan kita–Mencari-cari rahasia–Makan, minum, merokok dan omong-omong di masjid–Mani–Mimpi dan ta'birnya–Mu'jizat Nabi belah bulan–Perayaan hari lahir dan mi'raj Nabi saw–Meninggalkan rukun Islam–Thariqah naqsyanbandiyah–Taqlid–Tauhid ma'rifat–Huwallah–Memuliakan perkataan 'ulama.

MAJLIS ULAMA INDONESIA

The MUI, founded in 1973, operates at both national and provincial level. *Fatāwā* are produced at both levels.

The national MUI

There are three sources.

Himpunan Keputusan dan Fatwā MUI *Jakarta, 1995*
This is a collection of 53 *fatawa* divided into five sections: (i) the MUI method for decision (see chapter1); (ii) *'Ibādāt*, 13 *fatāwā*; (iii) social matters including standards of conduct required of state officials, narcotics, films, zakāt, adoption, massage parlours, inheritance of land, mixed marriages, family planning, lottery, foods. There are 25 *fatāwā*; (iv) deviant

religious teachings, five *fatāwā*; (v) on problems in science and technology, including medical matters, family planning and new types of food, ten *fatāwā*. The breakdown is: *ʿibādāt* 20 per cent, social issues 50 per cent, religious teaching 10 per cent, and science 20 per cent.

Himpunan Fatwā MUI *Jakarta, 1997*
This collection is a revised version of the 1995 *Himpunan*. It has a total of 76 *fatāwā* in five sections: (i) *ʿIbādāt*, a repeat of the 1995 edition but with some additions; there are 19 *fatāwā*; (ii) religious teachings, a repeat of 1995 with two additions; there are seven *fatāwā*; (iii) social matters, a repeat of 1995 but with considerable additions; There are 29 *fatāwā*; (iv) science and technology, a repeat of 1995; there are seven *fatāwā*; (v) permitted and forbidden food and drink; a reworking of 1995 with 14 *fatāwā* followed by an appendix of 27 pages listing food products, identified by brand name, which have received a certificate of compliance with the *halāl* rules. The breakdown is *ʿibādāt* 25 per cent, religious teaching 9 per cent, social matters 37 per cent, science and technology 9 per cent, food and drink 20 per cent. The balance between the 1995 and 1997 editions is much the same, except that the emphasis for science and social matters is less in 1997.

20 Tahun MUI *Jakarta, 1995*
This is not a collection of *fatāwā* proper but the second half, *lampiran* (attachments), has 18 position papers on a wide variety of subjects.

The Provincial MUI

Each province (*propinsi*) or 'special area' (*daerah khusus Indonesia, DKI*) has its own MUI committee, established from 1973. The huge mass of material that these committees have generated is far outside the scope of this book. Each province has its own format for disseminating opinions and rulings. The material also includes articles published in a variety of periodicals authorised by the respective MUI. One of the most important is the '*muzakarah*', a debate/dialogue or, secondarily, the group study of an issue. The term is used only in relation to Islam and is, therefore, much more confined and specific than '*diskusi*'. While it may be stretching the definition of *fatwā* to include *muzakarah*, it is also foolish to ignore them because they provide an essential context for contemporary *fatāwā*. For example, just for the years 1996–99, the Sumatra Utara MUI held *muzakarah* on the following: lailatul qadar dan keutamaannya, hijrah dan reformasi dan reformasi ekonomi, puasa dan kesehatan mental/jasmani, puasa sebagai sarana pendidikan/nilai kerja, al-Quran kaitannya dengan teknologi/dan sistem hukum di Indonesia, mu'amalah maliyah dalam Islam/prinsip ekonomi Islam, Islam dan globalisasi, dunia dalam pandangan Islam, keberadaan Bazis dalam upaya pengentasan kemiskinan, kedudukan zakat dalam Islam, konsep keadilan . . . dan implikasinya terhadap tanggung jawab

moral, Al-Qur'an dan turunnya, Al-Qur'ann dan Ilmu pengetahuan, sikap Islam terhadap perekonomian umat, mesjid sebagai pusat pembinaan dan pengembangan ekonomi Islam, darurat dalam Syari'at Islam (several dialogues on this issue), tinjauan masalah perceraian/thalaq menurut Undang-Undang No. 1/1974 [Marriage Law] tentang perceraian, zakat . . . dan kemiskinan, ibadah puasa . . ., hikmah nuzulul Qur'an untuk kesehatan.

This is a very truncated selection for just a few years and we can compare it to a recent book put out by MUI-DKI Jakarta in 1992, entitled *Rangkaian Fatwā /Keputusan*. It consists of 75 separately numbered documents consisting of copies of correspondence (see chapter 5), submission papers to government, notes for guidance and *fatāwā*. The contents include: zakat, tafsir karangan Nazar Syamsu, pencantuman tulisan halal pada lebel makanan, Porkas (see chapter 5), sistem pendidikan calon ulama, suntikan bagi orang yang berpuasa, perkawinan antar agama (several opinions), pembacaan Qira'at Saba'h, pelaksanaan kebersihan, harta/tanah waqaf, arisan haji, ziarah kubur, pakaian seragam sekolah, *fatwā* penetapan hari 'Idul Adha', pembelian sahan Bank Mu'amalat RI, imbauan dan harapan.

BUREAUCRATIC *FATĀWĀ*—MINISTRY OF HEALTH

I have used seven *fatwā* from this source, the Majlis Pertembangan Kesehatan dan Syara, 1955–76. Each *fatwā* is a substantial booklet averaging 45–60 pages. All the *fatāwā* are based on scientific evidence; this brings out one interesting feature for those given in the 1950s–60s: the Indonesian is clearly a translation from the Dutch, which was the language used in the original discussion. For this reason the earlier *fatāwā* now read somewhat oddly. The *fatāwā* are:

- No. 4/1955 Soal-Bedah Majat
- No. 5/1955 Jusukan Limpa Milkpunctie (reprinted May 1972)
- No. 7/1957 Majat Pendidikan
- No. 9/1960 Sumpah Doktor dan Susila Kedoktoran ditinjau dari Segi Hukum Islam
- No. xi/1961 Pentjatjaran dalam Bulan Puasa Ramadan-Hukum Islam dan Ilmu Kedoktoran
- No. 8/1973 Lalat dalam Air Minum
- No. 21/1976 Bank Air Susu Ibu

Badan Kerja Sama Pondok Pesantren Jawa Barat

In 1986 this body (the West Java Pondok Pesantren Working Group) published a long booklet entitled *Fatwā Lengkap tentang Porkas*—'A Complete *Fatwā* concerning Porkas'. This is described in chapter 5. It is a well-argued and well-documented text.

Glossary and abbreviations

Aam, Ar. ʿāmm	That which is general, in law of a class
Adab	Rules for conduct; also instructional literature, especially for women (e.g. decorum, dress)
Adat, Ar. ʿāda	Custom, customary law used in opposition to hukum negara—laws of the state, syariah-Islamic jurisprudence, fiqh-technical rules of Islamic law
Ādil, ʿadl	A person of known good character, also justice
Agama	Lit. 'tradition'; its modern reference is 'religion', thus Agama Islam is the religion of Islam
Aḥādīth	*see* Ḥadīth
Aḥkām (pl. of hukum, Ar. ḥukm)	Laws, regulations, judgements
Ahl al-kitab	People of the Book, Jews and Christians
Ahmadiyah, Aḥmadīya	Followers of Mirza Ghulam Ahmad Kadiani; controversial as to its teachings on the Mahdī
Aisyiyah, Ar. ʿĀʾisha	The women's section/wing of Muhammadiyah, named after the wife of the Prophet
ʿAlīm (pl. 'ulāmā')	A scholar, a learned person
Aliran	Stream, flow, hence group or ideology
ʿAmal	Practice, judicial practice
ʿAmalī	Practical, the usual way
Amil, Ar. ʿāmil	An agent, esp. to give or receive payment
Anakangkat	Adopted child
ʿAql	Reason, rationality
Arisan	A revolving credit association
Arkān (sing. Rukn)	The essential requirements, conditions in a contract, also the Five Pillars

Asabiyya, ashabiyah, Ar. ʿaṣabiyyah	Companions, thus a group, in the 1930s used to refer to secular nationalists
Aṣl	An original case, the root, origin (*see also* Qiyās, ʿIllah, Ḥikmah)
Asuransi	Insurance contracts
Aurat	That part of the body which should be covered when outside the family
Azan, Ar. adhān	The call to prayer
ʿAzl	Coitus interruptus
Baiʿ	Contract of sale
Bangsa (kebangsaan)	Nation, people, race
Bāṭil	Of action in law, void
Bidʿa, bidʿah	Unwarranted innovation, unsustainable in dogma
Cadar	All-enveloping covering for women
Cina buta	'Blind Chinese'—the Malay and Indonesian term for muḥallil (*see* taḥlīl)
Ciri	Characteristic, distinctive feature
Dam	Compensation/penalty for failure to correctly comply with ritual on the Haj
Ḍamān	Liability for loss in contract
Ḍarūrāt	Necessity, al-Ḍarūrāt tubīḥ al-maḥzūrāt—'necessity makes the forbidden into permissible'
Ḍarūriyyāt	Protection of necessities, that which is considered indispensable for religion and for daily life
Desa	Village, local community
Dhikr	The repetition of fixed phrases, in order, for the purpose of glorifying God; there are many formulae
Dīn	Religion, specifically the religion of Islam, *see also* Agama
Doa, Ar. duʿāʾ	A prayer, prayers
EI^2	The Encyclopaedia of Islam, 2nd edition
Faqīh	Jurist
Farāʾid, also ʿilm al-farāʾid	The rules of succession to a deceased estate
Farḍ	That which is obligatory; in Indonesian understanding, equivalent to wājib (necessary)
Fāsid	Of actions in law, irregular but not void (bāṭil)
Fatwā (pl. fatāwā)	Opinion on a point of law or dogma given by a person with recognised authority (ijāza)
Fiqh, fiḳh	The technical rules of law, positive 'black letter' prescription
Fitrah	*see* Zakāt

Fuqahā (sing. faqīh)	Experts in fiqh, the technical prescriptions
Gharar	Unacceptable risk, esp. in commercial contracts
Ghusl	The major ritual ablution, washing the whole body
Guru besar	Lit. 'great teacher', used to mean the head of a religious educational institute (e.g. pesantren (s.v.))
Ḥadīth (pl. aḥādīth)	Report of the actions and words of the Prophet, a fundamental source of law
Haj, Ar. ḥajj	One of the Five Pillers of Islam—the pilgrimage to Mecca required of those who can afford the cost
Ḥajiyyāt	Legal conduct to alleviate hardship or illness
Ḥalāl	Proper, especially of food
Ḥalqa	Circle, group of eminent and recognised jurists
Ḥarām	Forbidden
ḥarām lī-ghayrih	Irregular
ḥarām lī dhātih	Forbidden
Harta pusaka	Heirloom
Harta Sapencarian	Property jointly acquired by husband and wife during marriage (in Java, gono-gini)
Ḥijāb	Veil, curtin (*see* Jilbab)
Ḥikmah	Underlying rationale (*see* Qiyās, ʿIllah and Aṣl)
Himpunan	Collection, here of decisions (keputusan), answers (jawab) and rulings (fatāwā)
HMI	Himpunan Mahasiswa Islam, the 'Muslim Students' Association'
ʿIbādāt	Prescribed ritual/prayers, religious duty; not alterable in contrast to muʾāmalāt (s.v.)
Ibʿādiyya (abʿādiyya)	Uncultivated land under Muh. Ali in Egypt
Iddah, Ar. ʿIdda	Waiting period prescribed for a wife after death or divorce of the husband before remarriage
Iftāʾ	The issuing of a fatwā
Iḥrām	The dress assumed by the pilgrim for Haj and umra
Ijāza	Authority to give fatwā 'appropriate authority' is al-ijāza liʾl-iftā. (*see* Introduction)
Ijmāʿ	Consensus of juristic opinion
Ijtihād	Authentic scholarly reasoning
Ikhtilāf	Difference of juristic opinion

Ikhtiyār	Choice, free will, will to action
ʿIlla, ʿIllah	Effective cause (*see also* qiyās)
Ilm al-tajwīd	Science of the recitation of the Qur'ān
Imām	The leader in prayer, also any one of the founders of the four Sunni schools
Īmān	Faith in God
Injil	The New Testament
Isnād	Chain(s) of transmission of aḥādiūth
Istiḥsān	Juristic preference—that is, argument from texts in the context of necessity
Istiṣḥāb	Presumption of continuity of an existing legal state
Istiṣlāḥ	Act of reasoning on the basis of public interest (al-maṣalīh al-mursala), the result not directly provable from texts
Iʿtikāf	Retirement to a mosque for a period; a meritorious act
Ittiba, Ar. Iʿtibār	Whether the sole transmitter of tradition is known, whether there is another authority; generally, transmission acceptable if one known authority is given
Jabariya	Of doctrine, that man's acts are predestined
Jāhiliyya	Of society, the period preceding God's revelation to the Prophet
Jaksa Agung	The Attorney-General of Indonesia
Janāba	Major ritual impurity
Jaringan	Transplant of tissue
Jawab	Answer to (a) an interrogatory or (b) a question of principle; taken here as equivalent to fatwā and keputusan in Indonesia, the three terms are interchangeable
Jawi	The adapted Arabic script used to write Malay
Jihād	Struggle, against one's baser instincts and also against the enemies of Islam
Jilbab	Head covering, also hijab
Jinn	Intelligent, incorporeal bodies
Jumʿat, al-Jumah	The Friday prayer
Jurisprudensi	*see* Yurisprudensi
Kadiriah, Ar. Qādiriyyah	One of the Sufi orders, widespread in Indonesia
Kāfir	Unbeliever
Kasasi	Cassation, *see* Yurisprudensi
Keluarga	Family
Keluarga berencana	Family planning
Keputusan	Decision

Keputusan Presiden/Menteri	Decision of the President/Minister; has the force of law
Keramat	A grave/tomb site of sanctity, commonly a place of pilgrimage
Khafī	Hidden, obscure, unclear words
Khuṭbah	The Friday sermon
Kitab, Kitab Kuning	Lit. 'yellow books'; Arabic/Jawi texts on all aspects of Islam used in pesantren (q.v.)
Kompilasi Hukum Islam	'Compiliation of Islamic Law'; *see* Introduction
Ḳunūt (Qunut)	Humility in the face of God, commonly expressed in prayer formulae, especially asking for protection in the face of danger
Landraad	Lower-level District Court in the Dutch colonial period
Madhhab (also Mazhab)	School of law
Mahdi, al-Mahdī	One who is guided by God; also the future deliverer before the world ends
Mahkamah Agung	The Supreme Court of Indonesia
Mahkamah Tinggi	The provincial (propinsi) High Courts of Indonesia
Mahr	*see* Maskahwin
Maita, Ar. mayta	A dead animal not properly (ritually) killed
Majlis	Council, committee, deliberative body
Majlis Tarjih	Council for/of Opinion (Muhammadiyah)
Majlis Ulama	Council of the learned—the term used at local, provincial and national level
Majlis Ulama Indonesia (MUI)	The Indonesian Ulama Council (*see* chapter 1)
Makrūh	In law permitted but reprehensible, questionable in practice
Malā'ika	The angels
Mandūb	In law, recommended, actions over and above that which is required
Maqāṣid al-sharī'a	The purposes/functions/objectives of law
Masā'il	Questions or issues in law
Masalah	Problem/issue
Masalah ilmu	Problems of science/knowledge
Maṣāliḥ al-mursala	Public benefit, derived from reason, not based on texts
Maskahwin, Ar. mahr	'Marriage gold', the obligatory payment, or acknowledged debt due from the groom or groom's family to the bride at the time the marriage contract is concluded
Maṣlaḥa mursalah	Public benefit/good/welfare
Metod ijtihād	Term used by Muhammadiyah, the 'method of scholarly reasoning'

Miqat, Ar. mīḳāt	Appointed time for prayer; of place where those who enter the ḥaram must put on the iḥrām (s.v.)
Mīḳāt makānī	Proper place
Mīḳāt zamānī	Proper time
Muʾāmalāt	Actual practice/conduct in social relations; distinguished from ʿIbādāt (s.v.)
Mubāḥ	In law, permitted, the neutral class of action
Mudarabah, Muḍāraba	Contracts, the operative principle of which is profit and loss sharing
Mufassar	Of words, the clear meaning
Muftī	One who has authority to give fatāwā, often now state-appointed
Muḥallil	The husband in the intermediate marriage; *see* Taḥlīl
Muhammadiyah	So-called 'modernist' reform movement, founded 1912 (*see* chapter 1 for legal method)
Mujadid, Ar. mujaddid	Renewal of religion, the renewer sent by God
Mujmal	A word which is unclear and whose context is not helpful
Mujtahid	One qualified to exercise independent reasoning; *see also* Ijtihād
Mumayyiz	Prepubescent male
Muqallid	One who follows (taqlīd) doctrine because he lacks qualification to exercise juristic reasoning; *see also* Taqlīd, Ijtihād
Mushalla	Prayer house
Mushalla Aisyiyah	Prayer house for women (Muhammadiyah)
Murtad, Ar. murtadd	An apostate
Musyrik, Ar. mushrik	Idol worshipper, or polytheist
Musytarak, Ar. mushtarak	The homonym
Muʿta	A marriage for a fixed term, a 'temporary' marriage
al-Muʿtazilī (Muʿtazilīte)	Speculative dogmatics, 'rationalism' in legal thought
Muthlaq, Ar. muṭlaq	In Indonesian usage, one or few within a class
Muzakarah, Ar. Muzākara	Disputation/debate
Nahdlatul Ulama (NU)	Islamic association founded 1926, so-called 'traditionalists' (*see* chapter 1 for legal method)
Najis	Impure, ritual impurity
Nasihat, Ar. naṣīḥāt	Advice
Naskh	Abrogation of one text authority in favour of another

Naṣṣ	Clear injunctions, explicit rulings
Niat, Ar. nīya	Intention to pray/for prayer
Nilai	Value, evaluation
Niṣāb	Minimum amount of income required to be liable to pay zakāt
Pancasila	'Five principles', the official state ideology; the principles are: Belief in One God, Humanitarianism, National Unity, Government by Consensus, Social Justice
Panduan	Guide, a genre of literature which is didactic or instructional, especially for women
Pengadilan Agama	Religious Court—that is, the Islamic (Muslim) Court
Penghulu	The Javanese and Madurese term for Qāḍī (s.v.)
Peraturan pemerintah	Government regulations
Perceraian	Divorce, separation
Persatuan Islam (Persis)	'Islamic Association', founded 1923 (*see* chapter 1)
Persis	*see* Persatuan Islam
Pesantren	Islamic teaching institution for children and teenagers (Java); also pondok in Malay; typically, the students are boarders
Pondok	*see* Pesantren
Priesterraad	'Priests' Court', the Dutch term for Religious Courts in the NEI, first established in 1882 for Java and Madura
Puasa, bulan Puasa	Ramaḍān
Qāḍī (Kathi)	Judge in a Muslim court
Qiyās	Analogical reasoning; there are various technical categories
Qunut	*see* Ḳunūt
Raḍāʿ	Suckling, is a bar to the marriage of foster-kin
Rakyat	The common people
Raʾy	Considered opinion
Ribā	Interest on money
Ribā faḍl	Excess, usury
Ribā nasīʾat	Credit
Rūḥ	Soul, has a complex philosophy (*see* EI^2 VII:880)
Rūḥ insani	Human being
Rūḥ jiwa	With a soul/psyche
Rūḥ hayati	Biological life
S	Sūra, a chapter of the Qur'ān
Sadd al-Dharāʾiʿ	Blocking/preventing the means/access to a wrongful action

Santri	A strict adherant of Islam
Shahāda	The profession of faith
Shalat, Ar. ṣalāt	Prayer, including prescribed ritual
Shalihah, saleh	Virtuous, pious
Sharīʿa	*see* Syariah
Shirr, Ar. siḥr	Magic
Shiyam, Ar. ṣawm	The Fast prescribed for Ramaḍān
Shūrā	Consultation, consultative body
Sila	Principle, *see* Pancasila
Silsilah	Lit. 'chain', often scholarly genealogy as well as lineage
Ṣūfī	A mystic, member of one of the ṭarīqa
Sunni, Ar. Sunnī	Consisting of the four schools: Ḥanafī, Mālikī, Ḥanbalī and Shāfiʿī
Surat Edaran	'Circular Letter', produced within the Indonesian bureaucracy and interpreting policy for state officials
Surat Keputusan	Letter of advice from a Minister; in the Indonesian legal system has the force of a ministerial decision
Syariah (Ar. sharīʿa)	The 'clear path', the concept of law in its widest sense
Syarikat	Partnership or company, also property of a partnership or company
Syirk, Ar. Shirk	Associating God with something/ someone, hence polytheism
Syubha, Ar. ṣubḥ	In law, doubt, uncertainty
Taʾalik, taʾlik	Divorce based on the husband breaking a condition in the marriage contract
Taʿām	Food, that which is permitted and that which is not
Taat	Obedient
Tafsīr	Explanation, exegesis of the Qur'ān
Ṭahāra	Ritual purity, purification both mental and physical
Tāḥlīl	The intermediate marriage which makes a divorced wife lawfully permitted again to the previous husband; the husband in the intermediate marriage is termed muḥallil
Taḥsīniyyāt	'Improvements', to non-obligatory features of syariah—in the work of al-Shaṭībī
Tajdīd	'Reform', 'reformation', a modern usage associated with Ḥasan Turābī
Takaful	'Islamic' insurance in which claims are paid for out of a common fund provided by premiums plus lawful profits—that is, not derived from interest (Ribā)

Takhayyur	Blending from different schools/ doctrines; more than compromise, less than a new invention, *see* Talfīq
Takwa, taqwa, Ar. Taqwā	Fear of God, acknowledgement of God, submission to God
Ṭalāq, Ar. Ṭalāḳ	Divorce at the initiative of the husband by way of repudiation
Talfīq	Borrowing from several different schools of law in order to create a new rule
Tanya	An interrogatory or request for a statement of principle
Taqlīd	A close following of the accepted texts/authorities of one of the four Sunni schools
Ṭarīqa	Schools of mysticism, fraternity or brotherhood of mystics
Ṭarjih	Reason/opinion
Taṣawwuf	Mysticism, mystical practices
Tauhid, Ar. Tawhīd	The unity/oneness of God
Taurat, Ar. Tawrāt	The Torah
Tawakkul	Trust in god, mystic state of abandonment into God's hands
Taʾwīl	Interpretation of equivocal language
Tayammum	Performing ritual ablution with sand/earth where water is not available
Tudung	Head cover, also hijab, jilbab
Uang taspen	Civil service pension fund
'Ulāmā', sing. 'ālim	The totality of the scholars/learned
Umma	The totality of the believers
Undang, pl. undang-undang	Law, law texts
Upah	Remuneration for work done, commission
Ushalli, Ar. uṣallī	To recite the intention to pray, *see* Niat
Uṣūl al-fiqh	Principles of law/legal thought, jurisprudence
VOC	The Dutch East India Company
Wājib	In law, that which is obligatory
Wakaf, also waqf, wagf	A gift for the relief of poverty and the promotion of religion, most often of land; analogous to the English charitable trust, but not the same
Walī	Guardian, protector, male relative legally responsible for the bride
Walī hakim	Guardian appointed by the state for marriage
Walī mujbir	One who may contract a marriage for a woman without her consent
Walī nikah	Guardian for marriage
Wanita	Women, womanhood

Waqf	*see* Wakaf
Wuḍūʾ, wudlu	Ritual ablutions before prayer
Yurisprudensi, also Jurisprudensi	Judicial decisions but not binding precedent; when from the Mahkamah Agung (Supreme Court), cassation
Ẓāhir	The apparent meaning of a text or law
Zakāt	Compulsory payment for relief of poverty, 'alms tax'; fitrah (Ar. fiṭr), the payment required at the end of Puasa
Zharir, Ar. ẓahīr	That which is manifest though glossed
Ziarah, Ar. ziyāra	Visitation to a holy place, tomb
Zikir, zikr, Ar. dhikr	'Recollection', the repetitive invocation of God's names so as to attain a concentrated spirituality
Zināʾ, zinah	Unlawful/forbidden sexual relations

Notes

1 Request (*masa'la*), answer (*jawab*), which might be a clear solution (*taqrir*) or one by consensus (*malhab*)
2 Makdisi 1981: 271
3 *Ibid.* p. 197
4 See Hallaq 1996, for an authoritative discussion of the definition of *muftī-muqallid*
5 For an extensive description and analysis see the papers in Masud et al. 1996
6 For the former see representative examples of '*ulāmā*' response in the special issue of *Asian and African Studies*, vol. 7, 1971, 'The 'Ulāma' in Modern History', with papers on Ottoman Turkey, Syria, Egypt, Sudan, the Maghrib and Palestine
7 Especially in Shāfiʿī's *Risāla*; see Kerr 1966: 125ff
8 See also here Shahrabi 1970: Chs II, III and IV and Skovgaard-Petersen 1997: 119ff
9 Kerr 1966: 144
10 See, for example, Kedourie 1966: 63ff
11 See Akhavi 1997 and Shepard 1996
12 Called *Nūr al-Islām* for vols 1–6. See Skovgaard-Petersen 1997 for a valuable history
13 The dār al-Iftā dates from 1895
14 Smith 1957: 122ff
15 *Ibid.* p. 127
16 Lazarus-Yafeh 1971
17 For a full description see Rispler-Chaim 1993 and 1996
18 See also Ansari 1961
19 See the very important work by Zebiri 1993
20 *Ibid*. p. 52ff for a full account
21 *Ibid.* p. 108ff
22 See Messick 1996
23 See Hooker 1997 and the following chapters
24 Skovgaard-Petersen 1997: 251–294

25 *Ibid.* pp. 295–386
26 Hallaq 1997: 214ff
27 *Ibid.* p. 230
28 *Ibid.* p. 231ff
29 *Ibid.* p. 243
30 See van Bruinessen 1995 for an excellent survey
31 See Hooker 1986
32 See Milner 1983
33 Bousfield 1983: 95
34 *Ibid.* p. 93f for references
35 EI^2 III:1230–35 for an outline of the *mss* and, more recently, an illustrated essay by Proudfoot & Hooker 1996
36 See Day 1983 for a closely argued account of Javanese *mss*
37 For others, see Milner 1983
38 See Day 1983: 152ff
39 *Ibid.* p. 157ff
40 Ellen 1983
41 *Ibid.* p. 54
42 See Snouck 1883, Poensen 1886
43 See Locher-Scholten 1994 and Meulman 1997
44 See Snouck 1883: 12, also cited in Noer 1973: 20
45 See Hooker 1984: 93ff for an outline. A full history remains to be written
46 See Boland 1971
47 This was the Marriage Law of 1929. Staatsblad No. 348
48 A draft marriage law was put forward in 1937 but came to nothing. Reform had to wait until 1974 and again in 1989/1991
49 For example, the law on mixed marriage. See Hooker 1984: 254
50 Van den Burg 1886, Snouck 1899
51 Van Bruinessen 1990
52 There is a good outline in Lubis 1997: 43ff
53 Guru Ordonnantie, Staatsblad No. 550 (1905)
54 Staatsblad No. 219 (1925)
55 See Noer 1973: 177f
56 *Ibid.* p. 179ff on the 'Wilde Scholen'
57 Biographies such as these are not unusual. See, for example, the NU equivalent in Ma'shum 1998
58 See Azra 1995
59 *Ibid.* p. 31
60 See Lubis 1997: 48
61 Or at least it appeared as such in the Ministry of Religion Instructions from 1953. Whether it is still in use in the *Pengadilan Agama* subsequent to the *Kompilasi* of 1989 (below) is another matter
62 The standard Shāfiʿī texts. See Lubis 1997: 49–50
63 Lubis 1997: 50
64 The Dutch were not the only offenders. The British in Africa, Malaya and India had a long history of handbooks very similar to the ones just described. See Hooker 1975: Ch. III
65 See, for example, the views of Poensen, a missionary in Central Java cited in Noer 1973: 25

66 For example, the Caliphate. See van Bruinessen 1995
67 The Padri War in Minangkabau is another example
68 Cited to this effect in Noer 1973: 27
69 See Husson 1997 citing official records
70 See Benda 1958, still after 40 years the classic work
71 See Damien & Hornick 1972
72 In the Indonesian legal system, the Elucidation carries the same weight as the law itself
73 Pranowo 1990
74 For further references, see the essays in Budiman 1990
75 See Hooker 1984: 249–54
76 See Hooker 1998: 103ff
77 See Noer 1973, Kahfi 1997, Hamim 1997
78 This is the most important aspect of orientalism with reference to Islam. For a modern example, see Burton's 1977 study of the Qu'rān *as text*
79 Akhavi 1997: 377
80 See *ibid.* p. 380ff for a sophisticated analysis of the scripturalist positions
81 See Liddle 1996 for a description
82 Siddiq 1950, cited in Noer 1973: 234
83 Cited in Noer 1973: 83
84 See Federspiel 1970, Noer 1973
85 Contained in an extensive literature. See Federspiel 1970 for texts
86 See Hamim 1997 for a good, recent account
87 Moenawar Chalil 1954
88 See Hamin 1997: 22–3 for examples
89 Moenawar Chalil 1970
90 Q V:3, IX:74, LXI:7
91 An important corollary of this is that Ṣūfism is not an acceptable practice because (a) it is essentially a retreat into quietism and (b) because the relationship of strict obedience between disciple and master is a negation of reason
92 Noer 1973: 273ff
93 *Ibid.* pp. 275–90
94 Hazairin, 1951, 1960, 1962, 1963, 1964, 1968, 1969, 1974
95 See Lubis 1997: 53ff for an outline
96 See, for example, Hazairin 1960, 1963
97 Lubis 1997: 55ff
98 *Ibid.* p. 86, nn37 and 39 for sources.
99 On *adat* and women's rights in the 1960s, see Lev 1962
100 A former diplomat with an education in both *pesantren* and the West. See Effendi 1995
101 See Lubis 1997: 59f
102 For biographical details see Muzani 1994: 93ff
103 The most important are his 'Islam Rasional' 1995, 'Teologi Islam' 1986, 'Akal' 1986a
104 *Institut Agama Islam Negeri*—State Religious Institute—of which there are 14 in Indonesia
105 He is prepared to include Hinduism and Buddhism in this category on the ground that, despite belief in multiple facets of God or multiple representations,

monotheism is accepted by *Indonesian* adherents. This may or may not be sociologically accurate
106 Rasjidi 1977: 11ff
107 See Muzani 1994: 123ff on Nasution and the New Order regime
108 In his 'Akal' 1986 and 'Islam Rasional' 1995
109 See his discussion of Revelation in 'Akal' 1986: 15ff
110 S. Fussilat: 40, Al-Katif: 29 and al-Ra'ad: 11. See Nasution 1995: 144f
111 A comment by Dr Muzani 1994: 123 n68 citing an unpublished paper by Nasution presented in 1983
112 For biographical data see Barton 1997
113 He is Rector of the ParamadinaMulya University in Jakarta
114 Madjid 1994
115 *Ibid.* p. 67
116 *Ibid.*, citing S XXX:30, IV:28 and LXXV:20
117 He cites well-known Western scholars, including Ernest Gellner and Marshall Hodgson, as well as Ibn Taimiyyah, A. Yusuf Ali and earlier Indonesians such as 'Abdal-Hamīd Hakīm—the latter a somewhat neglected figure in the history of contemporary Indonesian Islam. See *his al-Mui'īn al-Mubīn*, Bukittinggi, Nusantara Press, 1955
118 HMI: *Himpunan Mahasiswa Islam* (Muslim Students' Association). He was also active in other Muslim organisations, in particular that responsible for producing the magazine *Mimbar Jakarta* (1971–74)
119 Original in mimeo; see Madjid 1979 for an English language explanation; there is an excellent English translation in Hassan 1982: Appendix A
120 See Hassan 1982: Ch. IV for the counterarguments
121 *Ibid.* Appendix B
122 Cited *ibid.* p. 204
123 We are reminded here of Harun Nasution (see above)
124 For example, S XLV:13
125 Hassan 1982: 209–10
126 *Ibid.* Appendix C
127 *Ibid.* Appendix D
128 See especially Madjid 1987
129 See Hassan 1982: 122
130 The fact that it is also a mythologisation of the Muslim past should be borne in mind
131 See, for example, Madjid 1994
132 See Barton 1995: 24ff
133 See Pranowo 1990 on this question
134 Abdurrahman Wahid 1996: xiii
135 See, for example, Barton 1995: 63
136 See Haidar 1995, Nakamura 1995
137 See the contributions in Barton & Fealy 1996
138 'Open House' Jakarta—Personal Communication to Professor V. Hooker, 'Open House', Ramaḍan, January 1999, Ciganjur, South Jakarta
139 See Abdurrahman Wahid 1981: 164ff
140 Abdurrahman Wahid 1975
141 A very good example on Islam and Pancasila in Wahid's political and social thought is a recent paper by Douglas Ramage, 1996

142 See generally the contributions in Barton & Fealy 1996
143 The leading theoretician is K.H. Achmad Siddiq. For latest comment, see Barton & Fealy 1996
144 For 'System' see Raz 1970
145 See, for example, the essays in Lindsey 1999
146 See, for example, Friedmann 1967: 109
147 And see above on 'Abduh
148 Friedmann 1967: 109
149 Hallaq 1997: 241ff
150 There are also individuals who publish *fatāwā* in the media and occasionally these are collected into books. In addition, minor groups are sporadically active. *Fatāwā* from these sources are specifically indicated in the appropriate place. There are also translations of contemporary *fatāwā* from the Middle East. For full details of sources, see the Appendix
151 See Noer 1973: 94—'his writing style upset his opponents'. Federspiel 1970: 28ff has a good short introduction to his theology
152 Respectively 'unequivocal', 'perspicuous', 'obscure'
153 Nos 520–7 are the most important
154 See Kamali 1989: 217f
155 See Djamil 1955a
156 Defined as *maṣlaḥa mu'tabarah*—that is, provided for in Revelation
157 See Kamali 1991: 207ff
158 Madjid 1994: 67, see also above
159 NU *Fatwā* No. 191/1935
160 NU *Fatwā* No. 153/1934
161 NU *Fatwā* No. 325/1979
162 Until recently it was common to find Roman script transliterations of Qu'rān on street bookstalls in Java
163 NU *Fatwā* No. 326/1979
164 NU *Fatwā* No. 327/1979
165 NU *Fatwā* No. 343/1983
166 Compare with the list of books for use in the *Pengadilan Agama*, see Mudzhar 1993: 37–8
167 In *Ahkām al-Fuqahā* 1995: 364–7
168 In the most recent Congress in 1999, the Pancasila was in fact reaffirmed by NU as an acceptable basis for the state
169 See Barton 1996
170 Siddiq 1979
171 Mudzhar 1998: 122–3
172 See its own account in 20 *tahun Majelis Ulama Indonesia*, Jakarta, MUI (1995)
173 One has only to visit the provincial MUE to realise the extents of local initiative. The MUI of Sumatra Utara in Medan, for example, publishes *Fatwā & Hukum*, and a debate/discussion series called *Al-Muzakarah* which has reached 95 issues. Similarly, the MUI Daerah Khusus Ibu Kota, Jakarta, is particularly active. See its *Rangkian Fatwā/Keputusan* (2nd edn) 1992
174 K. Nasution 1996: 124–6
175 See the essays in Hooker (ed.) 1983
176 NU *Fatwā* No. 13/1926

177 NU *Fatwā* No. 15/1926
178 See Jamhari 2000
179 NU *Fatwā* No. 100/1929
180 NU *Fatwā* No. 123/1932
181 NU *Fatwā* No. 250/1939
182 NU *Fatwā* No. 132/1932
183 *Tanya-Jawab* II: 216
184 LIX: 22, God is most powerful; XCVI:4–5, God teaches man; XII:68 and XVIII:65, God teaches different knowledge
185 NU *Fatwā* No. 145/1934. See also No. 105/1930, which criticises the practice of carrying banners inscribed 'Muhammad' on 12th Rabīul Awwal as not necessary though not sinful
186 'Unacceptable Sectarianism'; I am using this locution rather than 'heresy' because the latter raises too many preconceptions in Muslim history and in the history of revealed religion generally. The locution has the advantage of being neutral, perhaps to the point of insipidness, but it is at least accurate and value-free
187 No. 1/1926
188 No. 237/1939
189 Also NU *Fatwā* No. 254/1939
190 NU *Fatwā* No. 234/1938
191 No. 218/1937
192 See EI^2 IV:1074
193 See Seelye 1920, Kazi & Flynn 1984
194 This is Ibn Ḥajar al-Haytamī's commentary on the *Minhaj al-qawīm*
195 In *Tanya-Jawab Agama* II:239
196 In *Tanya-Jawab Agama* III:260
197 *Ibid*. p. 262
198 Ellen 1983: 63
199 '*Aliran yang Menolak Sunnah/Hadits Rasul*' published in *MUI Himpunan Fatwā* 1997: 78
200 S III:31–32, S IV:80, 59, 65, 105, 150–151, S LIX:7
201 See Kamali 1995: 79f for examples
202 *Ibid*.
203 From Al-Bukhāri
204 For example, again as Professor Kamali (1995: 79) points out, both al-Shāṭibi and al-Shawkāni argue that the sunna can be an independent source
205 In *MUI Himpunan Fatwā* 1995:IV:C, p. 147. Also in the 1997 (p. 71) edition but in much shorter form
206 Founded in 1898 by Mirza Ghulam Ahmad (1839–1908), it split in 1908, with the Qadiani branch retaining its belief in the Prophethood of the founder, and the Lahori branch acknowledging his status as a renewer (mujjadid) only. See EI^2: I:301
207 Citing S XXXIII:40, see also S XLVIII:28, LXI:9 and II:87–121 as well as a Muhammadiyah *jawab* in *Himpunan Putusan*, p. 279
208 The Medan MUI is the provincial committee for Sumatra Utara and publishes a series called *Fatwā & Hukum* under its imprint. I am using No. 3 of the 2nd edn (1983), which is solely on the Ahmadiyah Qadiani
209 In MUI *Himpunan Fatwā* 1995:IV:D, p. 55

210 Finances under Arqam control were estimated to have been something in excess of US$116 million in 1994, *Far Eastern Economic Review*, 1 September 1994
211 See Hopwood 1971: 150ff
212 See especially Ashaari Muhammad 1981, 1982, 1986. For a comprehensive account see Ahmad Fauzi [Abdul Hamid] 1999
213 S LXXXIX:27–30, XXVI:89
214 A hitherto obscure Javanese mystic who founded the *tariqah* 'Aurad Muhammadiyah' in the late 19th century/early 20th century in Mecca. From what little is known of his teachings, Sunni orthodoxy has no problems
215 See Meuleman 1996: 59ff
216 *Mimbar Ulama* No. 195 Th. XIX, pp. 32–7 (1994)
217 An obvious example is the debates around the 1974 Marriage Law. See Katz & Katz 1975
218 No. 270 in *Soal-Jawab*
219 *Tanya-Jawab Agama* I:215–21
220 *Ibid*. for Muhammadiyah. For Persis, No. 586 in *Soal-Jawab*
221 *Tanya-Jawab Agama* I:215
222 *Ibid*. p.p 216–17
223 This passage is mistakenly identified as from *ayat* 5
224 NU *Fatwā* No. 229/1938
225 Nos 430 and 594 *Soal-Jawab*
226 *Tanya-Jawab Agama* IV:205–16
227 *Ibid*. pp. 286–7
228 In *Tuntunan Menuju Keluarga Sakinah,* Majlis Tarjih, Jawa Barat 1989: 15–17
229 *Tanya-Jawab Agama* IV:286
230 NU *Fatwā* No. 297/1960
231 ʿAbdullah Sharqāwī's *Ḥāshiyaʿalā sharḥ at-taḥrīr*, a gloss on al-Anṣārī's *Tahrīr*
232 NU *Fatwā* No. 376/1989
233 In MUI *Himpunan Fatwā* (1997): 120
234 For a comprehensive summary see Mudzhar 1993: 86–7
235 In *Rangkaian Fatwā/Keputusan* (1985–92) Jakarta: MUI-DKI 1982: 63ff
236 *Ibid*. p. 68f
237 In *MUI Kumpulan Fatwā* 1995: 81–9. Also in Mudzhar 1993: 101ff
238 This is in fact a version of a *Fatwā* by Muslim
239 Mudzhar 1993: 105
240 *Ibid*. p. 105
241 In *Tanya-Jawab Agama* II:236–37
242 In *Tanya-Jawab Agama* I:219–220 (1990)
243 In *Tanya-Jawab Agama* I:221, II:238
244 In *Soal-Jawab* No. 277
245 In *Tanya-Jawab Agama* II:222–226
246 *Ibid*. p. 282
247 In *Himpunan Putusan Majlis Tarjih* 1997: 281, 313 (Orig. publ. 1967)
248 NU *Fatwā* No. 16/1926
249 NU *Fatwā* No. 236/1938
250 NU *Fatwā* No 242/1939
251 'Qomus Marbawi' is Idris al-Marbawī's *Kamus Arab-Melayu*, an illustrated dictionary in common use in the Malay-Indonesian world. The *fatwā* does not specify how it was used in this instance. The reference to 'El-Jawabus Syafi' is so vague as to be unidentifiable, at least at present

252 NU *Fatwā* No. 279/1954
253 NU *Fatwā* No. 319/1971
254 NU *Fatwā* No. 162/1935
255 NU *Fatwā* No. 252/1939
256 NU *Fatwā* No. 305/1961
257 NU *Fatwā* No. 326/1979
258 There are many Indonesian editions dating from the 19th century and it remains a standard text today
259 In *Tanya-Jawab Agama* II:223
260 *Kumpulan Fatwā, MUI* (1995):121–123
261 *Kampulan Fatwā, MUI* (1995):69–70. Also discussed in Mudzhar 1993: 93f
262 In *Himpunan Fatwā MUI* (1997):115
263 Respectively *Ṣaḥīḥ* and *Fatḥ al-Bārī*
264 Braune 1971: 45
265 Ar. Shahādah; see also S CXII
266 NU *Fatwā* No. 202/1937
267 In *Tanya-Jawab Agama* I:31
268 See *imān* in EI^2 III:1170
269 NU *Fatwā* No. 330/1979
270 NU *Fatwā* No. 303/1961
271 See Fox 1991 and Jamhari 2000 for account of the practice
272 No. 293 in *Soal-Jawab*
273 *Ibid*.
274 *Himpunan Putusan* 1997: 73–150 and *Tanya Jawab Agama* I–IV, s.v. 'Shalat'
275 NU *Fatwā* No. 321/1971
276 No. 355 in *Soal-Jawab*
277 NU *Fatwā* No. 122/1932
278 There is a sharḥ by the East Java *'alīm*, Mahfuz al-Termasi, who died in 1920. This is a possible source
279 Nu *Fatwā* No. 188/1935
280 No. 358 in *Soal-Jawab*
281 No. 299 in *Soal-Jawab*
282 See Fox 1991, Jamhari 2000
283 No. 118/1931 and 214/1937
284 NU *Fatwā* No. 217/1937
285 NU *Fatwā* No. 359/1986
286 NU *Fatwā* No. 360/1986
287 NU *Fatwā* No. 143/1933
288 Prisons do in fact have places for prayer, and the Friday prayer is given
289 In *Tanya-Jawab Agama* I:155
290 *Ibid*. p 154
291 In *Tanya-Jawab Agama* IV:130–135
292 Gibb & Kramers 1953: 188
293 S XLIV:3, XCVII:1–5
294 In *Tanya-Jawab Agama* III:107–110
295 In *Soal-Jawab* No. 13
296 I was told by a hotel maid years ago in Kuala Lumpur, who had seen a copy of the Qur'ān in my room, that I was not permitted to touch it and I should not have it because I was not a Muslim

297 In *Soal-Jawab* No. 313
298 See Kalb in EI^2 IV:489
299 See Roff 1996
300 In *Soal-Jawab* Nos 15 & 16
301 In *Tanya-Jawab Agama* I:47ff; II:44ff; III:54ff and IV:55ff
302 *Ibid*. I:53–54
303 See EI^2 VII:361a
304 In *Tanya-Jawab Agama* IV:63–64
305 Actually the ayat is given as 6 in the Muhammadiyah text. This is clearly an error
306 NU *Fatwā* No. 372/1989
307 NU *Fatwā* No. 163/1935
308 NU *Fatwā* No. 164/1935
309 NU *Fatwā* No. 205/1937
310 NU *Fatwā* No. 216/1938
311 In *Soal-Jawab* No. 40
312 In *Tanya-Jawab Agama* I:62, 87–88
313 In *Tanya-Jawab Agama* III:81, 121
314 In *Soal-Jawab* No. 68
315 In *Soal-Jawab* No. 342
316 In *Soal-Jawab* No. 339
317 NU *Fatwā* No. 144/1933
318 See Ṣalāt EI^2 VIII:925
319 In *Tanya-Jawab Agama* III:75
320 In *Soal-Jawab* No. 65
321 NU *Fatwā* No. 11/1926
322 NU *Fatwā* No. 187/1935
323 At pp. 83–100
324 In *Soal-Jawab* No. 334
325 See Ḳunut in EI^2 V:395
326 In *Soal-Jawab* Nos 108–145. For Muhammadiyah see *Himpunan Putusan*, pp. 225–66 and *Tanya-Jawab Agama* II:118, III:210, IV:252
327 NU *Fatwā* No. 108/1931
328 See any work on Ziarah, e.g. Fox 1991, Jamhari 2000
329 NU *Fatwā* No. 158/135
330 In *Soal-Jawab* No. 60
331 In *Tanya-Jawab Agama* I:116ff
332 NU *Fatwā* No. 179/1935
333 NU *Fatwā* No. 304/1961
334 See EI^2 III:236. In an early *Fatwā*, No. 45/1928, the NU classed these two as 'probably' angels and not *jinn*
335 For example, NU *Fatāwā* Nos 139/1933, 295/1960 and 368/1987
336 See above on *tayammum* while travelling by air
337 In *Kumpulan Fatwā Majlis Ulama Indonesia* (1984) discussed in Mudzhar 1993: 77ff
338 See EI^2 II:182 (Dāwūd b. Ali b. Khalaf)
339 Mudzhar 1993: 79
340 For example in *Tanya-Jawab Agama* IV:102ff and I:77, 112
341 NU *Fatwā* No. 10/1926
342 In *Tanya-Jawab Agama* IV:102

343 In *Soal-Jawab* No. 91
344 In *Soal-Jawab* No. 102
345 In *Soal-Jawab* No. 407
346 In *Tanya-Jawab Agama* II:149
347 In *Tanya-Jawab Agama* II:150
348 In *Tanya-Jawab Agama* I:126
349 In *Tanya-Jawab Agama* II:111, III:156, I:112, IV:169
350 NU *Fatwā* No. 179/1935
351 In *Himpunan Putusan* at pp. 179–80
352 In *Soal-Jawab* No. 60
353 In *Soal-Jawab* No. 181
354 In *Soal-Jawab* No. 442
355 NU *Fatwā* No. 368/1987
356 See, for example, Skovgaard-Petersen 1997: 85ff for a good account of the issue in Egypt in the early 20th century
357 Often commercially supported and accompanied by advertising of a surpassing vulgarity using religious themes
358 NU *Fatwā* No. 278/1954
359 NU *Fatwā* No. 342/1983
360 NU *Fatwā* No. 369/1987
361 In *Tanya-Jawab Agama* IV:202
362 *Ibid*. p. 192
363 In *Tanya-Jawab Agama* I:134
364 Also in *Tanya-Jawab Agama* II:142
365 In *Tanya-Jawab Agama* IV:196
366 In *Tanya-Jawab Agama* I:136
367 In *Tanya-Jawab Agama* IV:193
368 In *Soal-Jawab* No. 159
369 NU *Fatwā* No. 5/1926
370 NU *Fatwā* No. 336/1981
371 NU *Fatwā* No. 355/1986
372 NU *Fatwā* No. 286/1960
373 NU *Fatwā* No. 354/1986
374 Established by Law No. 38/1999, implemented by Ministerial Decision No. 581/1999
375 For an outline, see the essay in Ariff 1991
376 There is a good explanation in a Persis *fatwā*, in *Soal-Jawab*a No. 161
377 *Himpunan Keputusan Majlis Tarjih,* at pp. 152–66 and pp. 362–4
378 In *Tanya-Jawab Agama* I:133
379 *Ibid*. p. 134
380 In *Soal-Jawab* No. 161
381 In *Humpunan Keputusan,* p. 362
382 *Ibid*.
383 NU *Fatwā* No. 355/1986
384 NU *Fatwā* No. 357/1986
385 NU *Fatwā* No. 356/1986
386 NU *Fatwā* No. 336/1981
387 NU *Fatwā* No. 358/1986
388 In *Soal-Jawab* No. 159

389 See the essays in Ariff 1988, which give a Southeast Asian, including Indonesian, perspective
390 NU *Fatwā* No. 52/1928
391 NU *Fatwā* No. 54/1928
392 See *The Bulletin of Indonesian Economic Studies* for the years 1994–99
393 Ellen 1983: 64
394 NU *Fatwā* No. 388/1981
395 NU *Fatwā* No. 367/1986
396 NU *Fatwā* No. 365/1986
397 NU *Fatwā* No. 337/1981, 366/1986
398 NU *Fatwā* No. 370/1987
399 NU *Fatwā* No. 371/1986
400 NU *Fatwā* No. 394/1989
401 NU *Fatwā* No. 335/1981
402 NU *Fatwā* No. 339/1981
403 NU *Fatwā* No. 90/1930
404 The most extensive are in the Muhammadiyah *Himpunan Keputusan*, p. 186ff
405 See Noer 1973: 25–7 and the Dutch sources there cited. See also Husson 1997
406 NU *Fatwā* No. 374/1989
407 In *Tanya-Jawab Agama* I:142
408 In *Rangkaian Fatwā Keputusan,* pp. 156–8
409 In *Himpunan Keputusan dan Fatwā MUI* (1995), at pp. 31–2, 32–3, reprinted in *Himpunan Fatwā Majlis Ulama Indonesia* (1997), Ch. 1, Nos 10 & 11
410 *Ibid*.
411 NU *Fatwā* No. 348/1984
412 NU *Fatwā* No. 296/1960. The quota, fixed by the Saudi government, is the total number of pilgrims per annum who may make the Haj from each country. In Indonesia applications are dealt with by a special department in the Ministry of Religion
413 In *Tanya-Jawab Agama* I:141
414 NU *Fatwā* No. 375/1989
415 NU *Fatwā* No. 364/1987
416 NU *Fatwā* No. 398/1994
417 NU *Fatwā* No. 340/1981
418 In *Himpunan Keputusan dan Fatwā MUI* (1995), 31–3, reprinted in *Himpunan Fatwā MUI* (1997) Ch. 1, Nos 10 & 11
419 See Mudzhar 1993: 81f for the times
420 Mudzhar 1993: 82
421 There is a vast literature with continual additions. See Kimball & von Schlegell 1997, Roded 1998
422 See Stivens 1991 and the papers in *Islam and the Advancement of Women*, 1994, Jakarta: The Forum for Islam and the Advancement of Women. See also Berninghausen & Kerstan 1992, Feillard 1997
423 Extending even to feminist interpretations of Qur'ān and Sunna. See Mernissi 1991, Othman 1994
424 See, for example, the essays in Lindsey 1999
425 See Hooker 1999 for an outline
426 Professor James Peacock's idea of the 'Muslim puritan' is an Indonesian example. See Peacock 1978

427 Metcalfe 1990 on Maulana Thanawi's book, *Bihisthti Zewar* ('The Heavenly Ornaments')
428 There are of course other forms of didactic text; the novel Labrousse 1982, at the other end of the spectrum women's magazines. See Brenner 1999
429 See Gaffney 1994
430 See O'Neill 1993
431 There are many booklets; a good example is the material in Sunarto 1413
432 NU *Fatwā* No. 182/1935
433 In *Soal-Jawab* No. 220
434 In *Tanya-Jawab Agama* IV:239
435 NU *Fatwā* No. 305/1991
436 In *Soal-Jawab* No. 220
437 In *Soal-Jawab* No. 220
438 In *Soal-Jawab* No. 481
439 In *Tanya-Jawab Agama* IV:238
440 In *Tanya-Jawab Agama* II:215
441 *Ibid*. p. 214
442 In *Tanya-Jawab Agama* IV:235
443 *Ibid*. p. 234
444 In *Himpunan Keputusan Majlis Tarjih* (1967, reprinted 1998), at p. 283.
445 NU *Fatwā* No. 273/1946
446 NU *Fatwā* No. 53/1928
447 NU *Fatwā* No. 258/1940
448 NU *Fatwā* No. 133/1932
449 In *Himpunan Putusan Majlis Tarjih* (1967), p. 295
450 *Ibid*. p. 284
451 In *Soal-Jawab* No. 366
452 NU *Fatwā* No. 255/1939
453 Bouhdiba 1985: 233
454 NU *Fatwā* No. 135/1933
455 In *Tanya-Jawab Agama* IV:245
456 In *Soal-Jawab* No. 220
457 In *Soal-Jawab* No. 488
458 NU *Fatwā* No. 16/1935
459 In *Tanya-Jawab Agama* IV:245, *Himpunan Putusan Majlis Tarjih* (1967), p. 288
460 In *Tanya-Jawab Agama* I:198
461 In *Tanya-Jawab Agama* IV:240
462 NU *Fatwā* No. 281/1957
463 NU *Fatwā* No. 166/1935
464 See the essays by Mandal and Mobini-Kesheh in Freitag & Clarence-Smith (eds) 1997
465 NU *Fatwā* No. 309/1961
466 In *Soal-Jawab* No. 186
467 In *Tanya-Jawab Agama* IV:215
468 Also necessary for women who conceived illegitimately, *Tanya-Jawab Agama* II:179, although NU *Fatwā* No. 289/1960 places the responsibility on the man who engaged in the sexual act with the woman's mother
469 NU *Fatwā* No. 8/1926

470 NU *Fatwā* No. 39/1928
471 NU *Fatwā* No. 40/1928
472 NU *Fatwā* No. 41/1928
473 NU *Fatwā* Nos 86/1930, 107/1930
474 NU *Fatwā* No. 95/1930
475 NU *Fatwā* Nos 126/1932, 168/1935
476 In *Tanya-Jawab Agama* IV:207
477 In *Soal-Jawab* No. 220
478 In *Tanya-Jawab* IV:211
479 NU *Fatwā* No. 174/1935
480 See for example, the Malay novel *Musafir* ('The Wanderer'), which has a chapter on a young Chinese convert to Islam acting as *Cina Buta*. Published in 1958, it was immensely popular going through 16 editions and set as a school text. It won several prizes in the first Malay novel writing competition in 1958. See Virginia Mathison Hooker, *Writing a New Society* (2000) at pp. 208–10, Sydney: Allen & Unwin
481 See for example, *Tanya-Jawab Agama* II:168–170: see EI² VIII:361 Raḍāʿ
482 See for example *Soal-Jawab* No. 500, and chapter 4
483 NU *Fatwā* No. 170/1935
484 NU *Fatwā* No. 196/1935
485 NU *Fatwā* No. 291/1960
486 NU *Fatwā* No. 379/1989
487 In *Soal-Jawab* No. 493
488 NU *Fatwā* No. 42/1928
489 NU *Fatwā* No. 235/1938
490 NU *Fatwā* No. 267/1940
491 In *Tanya-Jawab Agama* III:204
492 In *Soal-Jawab* No. 464
493 See the al-Irshād controversies of the time. In Frietag & Clarence-Smith (eds) 1997: 231ff
494 In *Tanya-Jawab Agama* II:176
495 In *Soal-Jawab* No. 190
496 In *Soal-Jawab* No. 194
497 In *Himpunan Fatwā MUI* (1997), p. 127. This is a short form only; an extensive discussion is in Mudzhar 1993: 84ff, which I use here
498 See Chapter XVI, 'Termination of Marriage'
499 NU *Fatwā* No. 378/1989
500 For an outline, see Hooker 1999
501 In *Soal-Jawab* No. 199
502 See Hooker 1978: 118ff
503 NU *Fatwā* No. 6/1926
504 NU *Fatwā* No. 20/1926
505 NU *Fatwā* No. 251/1939
506 NU *Fatwā* No. 301/1960
507 In *Tanya-Jawab Agama* IV:261
508 In *Tanya-Jawab Agama* I:222
509 See Lev 1972, Hooker 1978: 98ff
510 In *Kumpulan Fatwā MUI* (1997), p. 125 and in Mudzhar 1993: 90f
511 In *Fatwā Majlis Ulama DKI Jakarta* (1980?), pp. 21–9

512 See Willinck 1909
513 For example, NU *Fatwā* No. 347/1983, *Tanya-Jawab Agama* IV:217
514 NU *Fatwā* No. 133/1932, No. 258/1940
515 NU *Fatwā* No. 309/1961
516 NU *Fatwā* No. 400/1994
517 S XCV:4
518 See S II:30–34
519 S LVI:57, S VI:2–3
520 S VI:165
521 S XV:28–29
522 In *Soal-Jawab* No. 595
523 The only one I have been able to identify with certainty is Sir John Ambrose Fleming (1849–1945), pioneer of electrical physics
524 See EI^2 II:550
525 See, for example, S XCVI:4–5
526 S XCVI:6–7
527 Sardar 1989: 31ff for examples
528 I might, however, point out that some well-intentioned Muslims come close to this. For example, '*The Book of Signs'*, a popular video, uses spectacular scientific footage and animation to '. . . illustrate the scope and depth of knowledge contained within the Qur'ān'
529 See Sardar 1989: 30ff for other examples
530 *Ibid*. p. 59 and the contributions in Faruqi et al. (eds) 1981
531 Indeed, Western science is seen as a value free rationalism, and so essentially destructive
532 In *Tanya-Jawab Agama* I:195–198
533 In *Soal-Jawab* No. 590
534 See EI2 I:1084, IV:770, V:100
535 See Rosenthal 1990, Rispler-Chaim 1993, 1996 and, for Indonesia, Hooker 1997
536 Rosenthal 1990: 521ff
537 Citing S XXIII:115
538 In *Tanya-Jawab Agama* III:249–258
539 No. 9/1960, Dep. Kesehatan R.I. published by the Ministry of Health, Jakarta
540 NU *Fatwā* No. 111/1931
541 S II:132–133 and *NU Fatwā* No. 112/1931. See also in *Soal-Jawab* Nos 408–439 generally and Muhammadiyah *Tanya-Jawab Agama*, s.v. 'jenazah'
542 NU *Fatwā* No. 231/1938
543 Sayyid Bakrī's *Iʿānat aṭ-ṭālibīn*. There are two possible passages
544 NU *Fatwā* No. 283/1960
545 It is worth remembering that the national family planning program was just about to get underway in Indonesia at this time
546 Commentary (mid-19th century) on Ibn Qāsim's *Fatḥ al-qarīb*
547 NU *Fatwā* No. 382/1989
548 Sharbīnī's *Mughnī'l-muḥtāj*, Anṣārīs *Fatḥ al-wahhāb*, are the major references
549 In *Tanya-Jawab Agama* II:216
550 In *Himpunan Keputusan dan Fatwā* (1995), pp. 95–113, published by the Majlis Ulama Indonesia, Jakarta
551 See Roded 1998

552 S XVII:32, citing also the recent discussion in *Hasaballah* 1964: 263
553 NU *Fatwā* No. 381/1989
554 These comments must be read in the light of the NU publication *Membina Kemaslahatan Keluarga*, which is a general description of the main principles of family law for NU members. It is heavily idealistic in tone and its main emphasis is on the preservation—indeed, the sanctity—of the family. In this context contraception is always going to be difficult to justify. Books such as 'Family Issues' are attempts at establishing a general framework within which some consistency can be achieved
555 In Djamil 1995: 80ff
556 Mostly from Abū Dāwūd—see also the *Himpunan Putusan Majlis Tarjih*, p. 310f
557 Other passages from Qur'ān cited are: SII:185, 195; IV:22; V:6
558 From al Bukhāri and Muslim
559 An extended argument is in *Membina Keluarga Sejahtera*, p. 42ff
560 In *Tanya-Jawab Agama* I:193f. The MUI *Fatwā* described above is actually referred to
561 See *Himpunan Putusan Majlis Tarjih*, at pp. 309–10 for Qur'ān and *aḥādīth* references
562 NU *Fatwā* No. 396/1992
563 See Ḳatl & Ḳiṣāṣ in EI^2 IV:766
564 NU *Fatwā* No. 384/1989
565 In Djamil 1995: 94ff
566 In S II:195, '. . . Make not your own hands Contribute to your destruction . . .', and S IV:29, '. . . Nor kill (or destroy) Yourselves . . .'
567 See Nafs in EI^2 VII:880. This is a difficult and much-disputed area in Islamic philosophy
568 Citing S XXIII:12–14
569 See also 'Barzakh' in EI^2 I:1071, also difficult and disputed
570 For sources and publication details, see the Appendix
571 NU *Fatwā* No. 111/1931
572 NU *Fatwā* No. 109/1931
573 NU *Fatwā* No. 110/1931
574 NU *Fatwā* No. 148/1934
575 NU *Fatwā* No. 149/1934
576 NU *Fatwā* No. 315/1962
577 For source and publication details, see Appendix
578 In *Himpunan Keputusan MUI* (1995), pp. 125–6
579 In *Tanya-Jawab Agama* IV:259
580 In *Himpunan Keputusan MUI* (1995), p. 171
581 NU *Fatwā* No. 328/1979. The question was also apparently discussed in the NU Plenary Meeting 26–28 August 1989 but not reproduced in the current published collection. I rely only on the latter
582 Including Ibn Ḥajar's *Tuḥfat al-muḥtāj* and SIV:119
583 See Rispler-Chaim 1993: 45ff for examples of cosmetic surgery from Egypt
584 See Skovgaard-Petersen 1997: 328ff for discussion
585 Relying on Ibn Ḥajar's *Fatḥ al-bārī bi sharḥ al-Bukhārī*
586 See the sources cited in the notes immediately above
587 Described in detail in Skovgaard-Petersen 1997: 329ff

588 Bayḍāwī, ʿAbd Allāh, *Minhaj al-Wuṣūl ilāʿ ʿIlm al-Uṣūl*, 3 vols Cairo, 1899
589 In *Tanya-Jawab Agama* I:190
590 In *Tanya-Jawab Agama* I:190, II:213
591 In *Tanya-Jawab Agama* IV:227
592 *In Himpunan Keputusan MUI* (1995), p. 165, also in Mudzhar 1993: 106ff
593 See *waṣīya* in the Encyclopaedia of Islam (2nd edn); EI^2 IX:115, 781
594 The actual text is given as 'Rahmat al-umma fi-ikhtilaf al-aimma.' The correct rendering is Ikhtilaf al aimah Ṛahmat al umma. It is printed in the margins of Anṣārī's *Al-Mizan al Kubra*
595 In *Himpunan Keputusan MUI* (1995), p. 176
596 NU *Fatwā* No. 315/1962
597 See generally Rispler-Chaim 1993: 28ff
598 NU *Fatwā* No. 332/1981(?), date uncertain
599 NU *Fatwā* No. 333/1981
600 NU *Fatwā* No. 334/1981
601 NU *Fatwā* No. 383/1989
602 In *Bayi Tabung dalam Sorotan Hukum Islam* (1980), Jogjakarta: Persatuan Muhammadiyah
603 In *Tanya-Jawab Agama* I:188, III:257
604 NU *Fatwā* No. 395/1994
605 In *Tanya-Jawab Agama* I:190
606 No. 21/1976. For full reference, see Appendix
607 *NU Fatwā* No. 318/1971
608 In *Himpunan Keputusan MUI* (1995), p. 180
609 See, for example, Kamali 1991: 314ff
610 For example, interreligious marriage, see above ch. 1
611 In *Bayi Tabung dalam Sorotan Hukum Islam* (1980), p. 53ff
612 NU *Fatwā* No. 331/1981
613 NU *Fatwā* No. 397/1994
614 Ministry of Health, Jakarta, No. XI/1961
615 *Peraturan Pemerintah* No. 53/1959, and Ministerial Instruction of the same year
616 Including a brief history of 'cowpox' and the work of Edward Jenner (1749–1823) who created the smallpox vaccine
617 No. 18/1973, Ministry of Health, Jakarta
618 The English translations of these citations are from the Indonesian, *not* the Arabic
619 See Gibb & Kramers 1953: 555
620 See EI^2 VI:924
621 NU *Fatwā* No. 28/1926
622 NU *Fatwā* No. 69/1928
623 NU *Fatwā* No. 29/1927
624 See Hooker 1978: 85ff for outline and sources
625 *Sende*: Javanese, the same as *jual janji*, the sale with right to repurchase
626 NU *Fatwā* No. 30/1927
627 NU *Fatwā* No. 21/1928
628 NU *Fatwā* No. 94/1930
629 NU *Fatwā* No. 119/1932
630 NU *Fatwā* No. 121/1932

631 NU *Fatwā* No. 125/1932
632 NU *Fatāwā* Nos 146, 147/1934
633 NU *Fatwā* No 154/1934
634 NU *Fatwā* No. 181/1934, also NU *Fatwā* No. 69/1928
635 In *Tanya-Jawab Agama* I:201f
636 No. 551 in *Soal-Jawab*
637 No. 550 in *Soal-Jawab*
638 NU *Fatwā* No. 220/1938
639 NU *Fatwā* No. 222/1938
640 NU *Fatwā* No. 260/1940
641 NU *Fatwā* No. 385/1989, No. 119/1932
642 NU *Fatwā* No. 48/1928, No. 90/1930
643 NU *Fatwā* No. 68/1929
644 NU *Fatwā* No. 79/1929
645 NU *Fatwā* No. 248/1939
646 NU *Fatwā* No. 339/1981
647 NU *Fatwā* Nos 361, 362, 363/1986
648 NU *Fatwā* No. 371/1987
649 NU *Fatwā* No. 390/1989
650 NU *Fatwā* No. 401/1994
651 See generally *baiʿ* in Gibb & Kramers 1953: 56
652 In *Tanya-Jawab Agama* II:229
653 In *Tanya-Jawab Agama* III:235
654 See Saeed 1996 for a recent analysis
655 *Ibid.*
656 See EI^2 VIII:491
657 NU *Fatwā* No. 204/1937
658 NU *Fatwā* No. 28/1927
659 NU *Fatwā* No. 316/1971
660 NU *Fatwā* No. 249/1939
661 NU *Fatwā* No. 371/1987
662 NU *Fatwā* No. 282/1957
663 NU *Fatwā* No. 219/1938
664 Set out at pp. 368–70ff the *Ahkam Fuqaha* (see Appendix for details)
665 See Saeed 1996 for descriptions
666 See, for example, Djamil 1995: 122
667 Djamil 1995: 122ff
668 In *Tanya-Jawab Agama* I:201
669 *Ibid*. pp. 202–4
670 In *Tanya-Jawab Agama* II:229–31
671 The contract is called *takaful,* 'joint guarantee'. See the essays in Ariff (ed.) 1991, esp. at pp. 191ff
672 NU *Fatwā* No. 387/1989
673 NU *Fatwā* No. 300/1960
674 NU *Fatwā* No. 256/1939
675 See Skovgaard-Petersen 1997: 346ff for sources and discussion
676 In Indonesian, the *Kitab Undang Undang Hukum Pidana*, Article 246
677 See Skovgaard-Petersen 1997: 335ff for description
678 See Djamil 1995: 134ff referring to al-Bahī

679 In *Tanya-Jawab Agama* III:241f
680 A made-up word, short for '*tabungan dan asuransi pegawai negri*'
681 S II:219
682 S IV:43
683 S V:93
684 In *Tanya-Jawab Agama* I:187
685 NU *Fatwā* No. 92/1930
686 In *Soal-Jawab* No. 9
687 In *Soal-Jawab* No. 222
688 In *Soal-Jawab* No. 223
689 NU *Fatwā* No. 391/1989
690 NU *Fatwā* No. 310/1962
691 In *Himpunan Keputusan dan Fatwa MUI* (1995), p. 181
692 s.v. EI^2 *najis* (*nadjis*) in EI^2 VII:870
693 In *Soal-Jawab* No. 8
694 NU *Fatwā* No. 287/1960
695 *Jukh*, woven cloth, in contrast to wool, *Ṣūf*
696 In *Himpunan Keputusan dan Fatwa MUI* (1995), p. 95 (in the 1997 edition at p. 113)
697 The authority to issue the *ḥalal* label for food is a bureaucratic nightmare. Several ministries compete and the result today is confusion and corruption. The MUI and the Ministry of Religion have attempted to impose a standard procedure, so far without success
698 In its decision No. XIV/1962, published by the Ministry of Health, Jakarta
699 NU *Fatwā* No. 127/1932
700 NU *Fatwā* No. 124/1932
701 See *Tanya-Jawab Agama* I:178–184
702 In *Tanya-Jawab Agama* II:228
703 In *Tanya-Jawab Agama* III:238–241
704 As a change from the often arid *fiqh* texts, the reader might like to look at Wilfred Thesiger's *Arabian Sands* and *The Marsh Arabs*, published in the 1950s–60s. Thesiger was always hungry and there are important data in his accounts
705 In *Soal-Jawab* No. 242
706 s.v. *kalb*, in EI^2 IV:489
707 In *Himpunan Keputusan dan Fatwa MUI* (1997), p. 156
708 *Ibid*. p. 158
709 Mudzhar 1993: 100f
710 NU *Fatwā* No 127/1932
711 In *Soal-Jawab* No. 225
712 In *Soal-Jawab* No. 537
713 NU *Fatwā* No. 341/1981
714 NU *Fatwā* No. 344/1983
715 In *Himpunan Keputusan dan Fatwa MUI* (1997), p. 208
716 Mudzhar 1993: 96ff
717 In *Soal-Jawab* No. 313
718 NU *Fatwā* No. 386/1989
719 For example, Persis *fatāwā* No. 33 (male observing a woman giving birth), No. 550 (films showing 'half naked women and kissing'), Muhammadiyah

(the uniform of boy scouts), NU *Fatāwā* Nos 129/1932 (males seeing the face and palms of a woman) and 135/1933 (women going out of the house)
720 NU *Fatwā* No. 255/1939
721 NU *Fatwā* No. 160/1935, and Muhammadiyah on musical instruments (in *Himpunan Putusan Majlis Tarjih* (1967), p. 282
722 In *Himpunan Keputusan dan Fatwā MUI* (1995), p. 75 and (1997), p. 153
723 *Rangkaian Fatwa/Keputusan* Edisi II:98–103 (see Appendix)
724 In *Tanya-Jawab Agama* I:209
725 See Hooker 1993: 99
726 In *Soal-Jawab* No. 279
727 *Ibid*. No. 581
728 *Ibid*. No. 575
729 In *Tanya-Jawab Agama* I:229–30
730 *Ibid*. p. 230, s.v. '*uang lomba*'
731 In *Tanya-Jawab Agama* II:233
732 In *Tanya-Jawab Agama* III:237
733 In *Tanya-Jawab Agama* I:231
734 Mudzhar 1993:125
735 In *Rangkaian Fatwā/Keputusan* MUI-DKI, Jakarta, 1992
736 This is the Malaysian '*ulama*' justification; see Hooker 1993
737 The modern equivalent is the Qur'ān reading prizes in Malaysia and Indonesia—also *musabaquah*
738 Including such respected journals as *Tempo* and *Panji Masyasakat*
739 See Kaptein 1995, 1997
740 See the article 'The Stagnation of Muhammadiyah Thought', in *Media Indonesia*, 18 November 1998
741 See, for example, Yūsuf al-Qaraḍāwī's *Hadyul Islam Fatāwā Mu'ashirah*, Beirut, 1988, translated as Yusuf Qardhawi, *Fatwā-Fatwā Kontemperor*, Jakarta, 1995
742 Also '*kaum tua*', '*kaum muda*'
743 See Hefner 1997 for a short survey
744 See Coulson 1969
745 See Mudzhar 1993
746 NU *Fatwā* No. 399/1994
747 NU *Fatwā* No. 403/1994
748 NU *Fatwā* No. 402/1994
749 Collingwood 1949: 314–15
750 Hallaq 1997: 40ff

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Islam is one of the world's oldest and most intriguing religions, and with so much recent attention focused on Muslim groups, the importance of understanding Islam today is self-evident. How does this classic religion deal with contemporary challenges in ethics and morality in a consistent and rational way? How in the 21st century do its complex moral and legal philosophies continue to provide an alternative to secularism?

Professor M.B. Hooker looks at how modern Indonesian Islamic thinking has responded to changes in social and cultural practices in this timely book. In particular he examines how authorities have ruled on such basic issues as purity and representation of doctrine, religious obligations, status and capacity of women, Islam and medical science, and offences against religion.

Hooker's research has been drawn from around 2000 fatāwā—formal opinion on points of law or dogma—collected from Indonesia between 1920 and 1990. The authority of the fatwā is independent of the state and is uncontaminated by European intellectual imperialism. It thus gives us a pure response to difficult issues from within Islamic thought, and is essential to how we understand Islam at this particular place and time.

M.B. Hooker is Professor of Law at the Australian National University, and an Honorary Senior Associate of the Asian Law Centre, University of Melbourne. He has forty years' experience in teaching and writing about Southeast Asia and is the author of *Islamic Law in South-East Asia*, and editor of *Islam in South-East Asia*, *A Concise Legal History of South-East Asia* and *Laws of South-East Asia*.

ALLEN&UNWIN
ISBN 1-74114-086-2
9 781741 140866
www.allenandunwin.com

Cover design: Tabitha King
Cover image: Getty Images

ASIAN STUDIES